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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8471; Directorate Identifier 2013–NM–153–AD; Amendment 39–18666; AD 2016–19–17]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2010–23–19 for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, and 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes. AD 2010–23–19 required repetitive inspections for damage of the main landing gear (MLG) inboard doors and fairing, and corrective actions if necessary. This new AD requires repetitive inspections for damage of the MLG inboard doors, MLG fairing, and adjacent structures of the MLG inboard doors, and corrective actions if necessary; replacement of the MLG fairing seal; and a terminating action involving increasing the clearances between the MLG fairing and MLG door. This new AD also adds one airplane and removes others from the applicability. This AD was prompted by reports of the MLG failing to fully extend. We are issuing this AD to prevent loss of controllability of the airplane during landing.

DATES: This AD is effective November 17, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 17, 2016.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8471.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8471; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7320; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2010–23–19, Amendment 39–16508 (75 FR 68695, November 9, 2010) (''AD 2010–23–19''). AD 2010–23–19 applied to certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, and 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes. The NPRM published in the **Federal Register** on January 20, 2016 (81 FR 3038) (''the NPRM''). The NPRM was prompted by reports of the MLG failing to fully extend. The NPRM proposed to continue to require repetitive inspections for damage of the MLG inboard doors and fairing, and corrective actions if necessary. The NPRM also proposed to require repetitive inspections for damage of the MLG inboard doors, MLG fairing, and adjacent structures of the MLG inboard doors, and corrective actions if necessary; replacement of the MLG fairing seal; and a terminating action involving increasing the clearances between the MLG fairing and MLG door. The NPRM also proposed to add one airplane and remove others from the applicability. We are issuing this AD to prevent loss of controllability of the airplane during landing.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Airworthiness Directive CF–2010–36R1, dated July 18, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, and 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes. The MCAI states:

> Two cases of main landing gear (MLG) failure to fully extend have been reported. An MLG failing to extend may result in an unsafe asymmetric landing configuration.
>
> Preliminary investigation has shown that interference between the MLG door and the MLG fairing seal prevented the MLG door from opening.
>
> This [Canadian] AD mandates the [detailed] inspection [for damage] and rectification [corrective action], as required, of the MLG fairing and seal, MLG door, and adjacent structures.
>
> Data collected from the Original Issue of this [Canadian] AD shows potential deficiencies with the inspection. This [Canadian] AD is revised to update the applicability section and to introduce additional mitigating actions and the terminating action [a modification that includes related investigative actions, and corrective action if necessary].

The unsafe condition is the loss of controllability of the airplane during landing. Damage includes the following:

- For the MLG fairing seal: Cracks, cuts, or tears in the material of the MLG

fairing seal, and cuts in the material base.

• For the MLG inboard doors: Missing or broken rollers on the MLG inboard door, missing stops, loose or missing fasteners from the stops, and damage (including, but not limited to, corrosion, cracking, and dents) along the edge of the MLG inboard door adjacent to the MLG fairing.

• For the MLG fairing: Missing forward and aft stops, loose or missing fasteners from the forward and aft stops, and damage (including, but not limited to, corrosion, cracking, and dents) along the edge of the MLG fairing adjacent to the MLG inboard door.

• For the stops and wedges on the forward and aft spars: Missing stops, loose or missing fasteners from the stops, missing wedges, and loose or missing fasteners from the wedges.

Corrective actions include replacement of MLG fairing seals, and increasing the clearances between the MLG fairing and MLG door.

The terminating modification involves increasing the clearance between the left and right MLG fairings and the left and right MLG doors. Related investigative actions for the terminating modification include the following inspections:

• A detailed inspection of the MLG fairing for missing forward and aft stops, loose or missing fasteners from the forward and aft stops, and damage along the edge of the MLG fairing adjacent to the MLG inboard door.

• A detailed visual inspection of the MLG inboard door for missing or broken rollers on the MLG inboard door, missing stops, loose or missing fasteners from the stops, and damage along the edge of the MLG inboard door adjacent to the MLG fairing.

• A detailed visual inspection on the stops and wedges on the forward and aft spars for missing stops, loose or missing fasteners from the stops, missing wedges, and loose or missing fasteners from the wedges.

• A liquid penetrant inspection or an eddy current inspection for cracks in the aft stop-fitting and stiffener of the forward member of the MLG inboard door.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8471.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM and the FAA's response to the comment.

Support for the NPRM

The Air Line Pilots Association, International (ALPA), stated that it supports the proposed requirements.

Request To Revise Preflight Check

ALPA requested that we mandate a flightcrew check of the MLG door from the rear during preflight checks of the aft portion of the MLG. ALPA stated that an informal poll of ALPA carriers suggested that there is not a universally required position from which to make such a check. ALPA suggested that including a specific MLG fairing seal check in the preflight procedures would enhance the preflight inspection.

We do not agree with the commenter's request. The door seals have numerous marks and the only way to determine if there is significant damage to the MLG door fairing and seal would be to perform a detailed inspection as specified in Bombardier Alert Service Bulletin A670BA–32–030. Flightcrews are not trained to accomplish this inspection and would not be able to accurately assess the damage during the limited time assigned for the preflight check. Canadian AD CF–2010–36R1, dated July 18, 2013, requires increasing the clearance between the MLG fairings and the MLG doors. The effectiveness of Canadian AD CF–2010–36R1 is being monitored, and we have no information that the required modification is not effective. As of April 2016, Bombardier In-Service-Engineering has confirmed that there have been no reports of the MLG door being jammed in the MLG fairing on airplanes that have done the actions specified in Bombardier Service Bulletin 670BA–32–040. We have not changed this AD in this regard.

Revised Service Information

Bombardier, Inc. has issued Service Bulletin 670BA–32–040, Revision F, dated February 11, 2016, including Appendix A, Revision A, and Appendix B, Revision B, both dated July 12, 2014. This service information incorporates small editorial changes, which have no effect on airplanes that have incorporated prior revisions of this service information. We have revised paragraphs (n) and (o) of this AD to reference this service information as the appropriate source of service information for accomplishing the required actions in those paragraphs. We have also added a new paragraph (p)(3)(v) to this AD to give credit for accomplishment of the actions required by paragraph (n) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 670BA–32–040, Revision E, dated November 13, 2014.

Clarification of Revised Repair Instruction

We have clarified the revised repair instructions in paragraph (g)(4) of this AD by specifying that, as of the effective date of this AD, if damage other than the damage identified in paragraph (g)(3) of this AD is found the repairs must be approved using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these changes:

• Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc. has issued Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013, which describes procedures for an inspection of the MLG inboard doors, MLG fairing, and adjacent structure of the MLG inboard doors. This service information also describes procedures for replacing damaged MLG fairing seal(s) and for a clearance check of the MLG door or, if necessary, for removing and/or installing a MLG door.

Bombardier, Inc. has also issued Service Bulletin 670BA–32–040, Revision F, dated February 11, 2016, including Appendix A, Revision A, and Appendix B, Revision B, both dated July 12, 2014. This service information describes procedures for increasing the clearances between the fairing and the MLG inboard doors, and between the MLG fairing and adjacent structure of the MLG doors. This service information also describes procedures for adjusting the MLG doors.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 416 airplanes of U.S. registry.

The actions required by AD 2010–23–19 and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2010–23–19 is $85 per inspection cycle for each product.

We also estimate that it takes about 50 work-hours for each product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,768,000, or $4,250 for each product.

In addition, we estimate that any necessary follow-on replacement actions would take about 24 work-hours and require parts costing $2,626, for a cost of $4,666 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2010–23–19, Amendment 39–16508 (75 FR 68695, November 9, 2010), and adding the following new AD:

2016–19–17 Bombardier, Inc.: Amendment 39–18666; Docket No. FAA–2015–8471; Directorate Identifier 2013–NM–153–AD.

(a) Effective Date

This AD is effective November 17, 2016.

(b) Affected ADs

This AD replaces AD 2010–23–19, Amendment 39–16508 (75 FR 68695, November 9, 2010) (''AD 2010–23–19'').

(c) Applicability

This AD applies to the Bombardier, Inc. airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, having serial numbers (S/Ns) 10002 through 10333 inclusive.

(2) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, having S/Ns 15001 through 15284 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing gear.

(e) Reason

This AD was prompted by reports of the main landing gear (MLG) failing to fully extend. We are issuing this AD to prevent loss of controllability of the airplane during landing.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Repetitive Inspections and Corrective Actions, With New Service Information and Revised Repair Instructions

(1) This paragraph restates the requirements of paragraph (g) of AD 2010–23–19, with new service information. For airplanes having S/Ns 10003 through 10313 inclusive, 15001 through 15238 inclusive, and 15240 through 15255 inclusive: Within 50 flight cycles after November 24, 2010 (the effective date of AD 2010–23–19), do the inspections specified in paragraphs (g)(1)(i) through (g)(1)(iv) of this AD, in accordance with ''PART A—Inspection of the MLG Inboard Doors, MLG Fairing and Adjacent Structure,'' of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision A, dated October 22, 2010; or Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013; as applicable. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013, to accomplish the actions required by this paragraph. Repeat the inspections thereafter at intervals not to exceed 600 flight hours.

(i) Do a detailed inspection for damage (including wear lines, cracks, fraying, tears, and evidence of chafing) of the rubber seal of the MLG fairing.

(ii) Do a detailed inspection for damage (including missing and broken rollers, loose and missing fasteners, and damaged and missing stops) of the MLG inboard doors, and for damage along the edge of the MLG inboard door adjacent to the MLG fairing.

(iii) Do a detailed inspection of the MLG fairing for damage (including missing forward and aft stops, and loose and missing fasteners), and for damage along the edge of the MLG fairing adjacent to the MLG door.

(iv) Do a detailed inspection for damage (including missing stops, loose and missing fasteners, and missing wedges) of the stops and wedges on the forward and aft spars.

(2) This paragraph restates the requirements of paragraph (h) of AD 2010–23–19, with revised service information. For airplanes not identified in paragraph (g)(1) of this AD, excluding the airplane having S/N 10002, and excluding airplanes having MLG fairing seals having part numbers (P/Ns) CC670–39244–5 and CC670–39244–6: Within 600 flight hours after November 24, 2010 (the effective date of AD 2010–23–19), do the inspections specified in paragraphs (g)(2)(i) through (g)(2)(iv) of this AD, in accordance with ''PART A—Inspection of the MLG Inboard Doors, MLG Fairing and Adjacent Structure,'' of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision A, dated October 22, 2010; or Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013, to accomplish the actions required by this paragraph. Repeat the inspections thereafter at intervals not to exceed 600 flight hours.

(i) Do a detailed inspection for damage (including wear lines, cracks, fraying, tears, and evidence of chafing) of the rubber seal of the MLG fairing.

(ii) Do a detailed inspection for damage (including missing and broken rollers, loose and missing fasteners, and damaged and missing stops) of the MLG inboard doors, and for damage along the edge of the MLG inboard door adjacent to the MLG fairing.

(iii) Do a detailed inspection of the MLG fairing for damage (including missing forward and aft stops, and loose and missing fasteners), and for damage along the edge of the MLG fairing adjacent to the MLG door.

(iv) Do a detailed inspection for damage (including missing stops, loose and missing fasteners, and missing wedges) of the stops and wedges on the forward and aft spars.

(3) This paragraph restates the requirements of paragraph (i) of AD 2010–23–19, with revised service information. If damage to only the rubber seal on the MLG fairing is found during any inspection required by paragraph (g)(1) or (g)(2) of this AD, before further flight, do either action specified in paragraph (g)(3)(i) or (g)(3)(ii) of this AD.

(i) Replace the rubber seal on the MLG fairing with a new rubber seal, in accordance with ''PART B—Replacement of the Forward Rubber Seal on the MLG Fairing,'' of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision A, dated October 22, 2010; or the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013, to accomplish the actions required by this paragraph.

(ii) Remove the MLG inboard door, in accordance with ''PART C—Removal of MLG Inboard Door,'' of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision A, dated October 22, 2010; or Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013. For airplanes on which the MLG inboard door is re-installed, do the installation of the MLG inboard door in accordance with ''PART D—Installation of MLG Inboard Door,'' of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision A, dated October 22, 2010; or Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013, to accomplish the actions required by this paragraph.

(4) This paragraph restates the requirements of paragraph (j) of AD 2010–23–19, with revised repair instructions. If damage other than the damage identified in paragraph (g)(3) of this AD is found during any inspection required by paragraph (g)(1) or (g)(2) of this AD, before further flight, contact the Bombardier Regional Aircraft Customer Response Center for repair instructions and do the repair; or repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). As of the effective date of this AD, if damage other than the damage identified in paragraph (g)(3) of this AD is found during any inspection required by paragraph (g)(1) or (g)(2) of this AD, before further flight, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(h) New Inspections of MLG Fairing Seal Having P/N CC670–39244–1 or CC670–39244–2

For airplanes on which an MLG fairing seal having P/N CC670–39244–1 or P/N CC670–39244–2 is installed: At the applicable time specified in paragraph (i)(1) of this AD, do the inspections specified in paragraphs (h)(1) through (h)(4) of this AD, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013, except as specified in paragraph (o) of this AD. Repeat the inspections thereafter at the time specified in paragraph (i)(2) of this AD.

(1) Do a detailed inspection for damage (including cracking, cuts, and tears in the material (fabric/rubber)) of the MLG fairing and seal.

(2) Do a detailed inspection for damage (including missing and broken rollers, loose and missing fasteners, and damaged and missing stops) of the MLG inboard doors, and for damage along the edge of the MLG inboard door adjacent to the MLG fairing.

(3) Do a detailed inspection of the MLG fairing for damage (including missing forward and aft stops, and loose and missing fasteners), and for damage (including, but not limited to, corrosion, cracking, and dents) along the edge of the MLG fairing adjacent to the MLG door.

(4) Do a detailed inspection for damage (including missing stops, loose and missing fasteners, and missing wedges) of the stops and wedges on the forward and aft spars.

(i) New Compliance Times for the Actions Required by Paragraph (h) of This AD

This paragraph specifies the compliance times for the actions required by paragraph (h) of this AD.

(1) The initial compliance time is specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD.

(i) For airplanes having S/Ns 10002 through 10313 inclusive; 15001 through 15238 inclusive; and S/Ns 15240 through 15255 inclusive: Within 50 flight cycles after the effective date of this AD.

(ii) For all other airplane serial numbers: Within 600 flight hours after the effective date of this AD.

(2) Repeat the inspections specified in paragraph (h) of this AD at the earlier of the times specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD.

(i) Repeat the inspections within 200 flight hours after the effective date of this AD. Repeat the inspections thereafter at intervals not to exceed 200 flight hours.

(ii) Repeat the inspections within 600 flight hours after the most recent inspection done in accordance with the requirements of AD 2010–23–19. Repeat the inspections thereafter at intervals not to exceed 200 flight hours.

(j) New Corrective Actions

(1) If any damage to the MLG fairing seal is found during any inspection required by paragraph (h) of this AD: Before further flight, do the actions specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD, except as specified in paragraph (o) of this AD.

(i) Before further flight, remove the MLG inboard doors, in accordance with Part C of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013. For airplanes on which the MLG inboard door is re-installed, do the installation of the MLG inboard door in accordance with Part D of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013.

(ii) Before further flight, replace the MLG fairing seals, in accordance with Part E of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013. Within 200 flight hours after installing the MLG fairing seals, do the actions required by paragraph (h) of this AD.

(2) If any damage other than that specified in paragraph (j)(1) of this AD is found, or if parts or fasteners are found missing, during any inspection required by paragraph (h) of this AD, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(k) New Replacement of MLG Fairing Seals

Within 2,500 flight hours or 12 months, whichever occurs first, after the effective date of this AD: Replace any MLG fairing seals having P/Ns CC670–39244–1 and CC670–39244–2 with P/Ns CC670–39244–5 and CC670–39244–6, respectively, in accordance with Part E of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013, except as specified in paragraph (o) of this AD.

(l) New MLG Fairing Seal Post-Replacement Inspections

Within 600 flight hours after installing fairing seals having P/Ns CC670–39244–5 or CC670–39244–6: Do the inspections specified in paragraphs (h)(1) through (h)(4) of this AD, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013. If any damage to the MLG fairing seal is found during any inspection required by this paragraph: Before further flight, do the applicable actions specified in paragraph (j)(1) or (j)(2) of this AD. If no damage is found during any inspection required by this paragraph, repeat the inspections specified in paragraphs (h)(1) through (h)(4) of this AD thereafter at intervals not to exceed 600 flight hours, except as provided in paragraph (m) of this AD.

(m) New Exception to MLG Fairing Seal Post-Replacement Inspections

After accomplishment of the initial inspections specified in paragraph (l) of this AD, removal of the MLG inboard door, in accordance with the Accomplishment

Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013, defers the repetitive inspections required by paragraph (l) of this AD until the MLG inboard door is re-installed. For airplanes on which the MLG inboard door is re-installed, do the installation of the MLG inboard door in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013, except as specified in paragraph (o) of this AD; and before the accumulation of 600 flight hours on the MLG inboard door since the actions required by paragraph (k) of this AD were accomplished, do the inspections specified in paragraph (l) of this AD, and repeat the inspections thereafter at the applicable time specified in paragraph (l) of this AD.

(n) New Terminating Modification

Within 6,600 flight hours or 36 months, whichever occurs first after the effective date of this AD: Modify the airplane by increasing the clearance between the left and right MLG fairings and the left and right MLG doors; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–040, Revision F, dated February 11, 2016, including Appendix A, Revision A, and Appendix B, Revision B, both dated July 12, 2014, except as provided by paragraph (o) of this AD. Do all applicable related investigative and corrective actions before further flight. If an MLG door has been removed, the modification may be delayed until the MLG door is re-installed in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013. Accomplishing this modification terminates the requirements of paragraphs (g) through (m) of this AD for that MLG door.

(o) Exceptions to Bombardier Service Information

Where Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013; and Bombardier Service Bulletin 670BA–32–040, Revision F, dated February 11, 2016, including Appendix A, Revision A, and Appendix B, Revision B, dated July 12, 2014; specify to contact the Bombardier Customer Response Center for an analysis or to get an approved disposition, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(p) Credit for Previous Actions

(1) This paragraph restates the provisions of paragraph (l) of AD 2010–23–19, with additional service information. This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before November 24, 2010 (the effective date of AD 2010–23–19), using Bombardier Alert Service Bulletin A670BA–32–030, dated October 18, 2010; or Bombardier Alert Service Bulletin A670BA–32–030, Revision A, dated October 22, 2010.

(2) This paragraph provides credit for the corresponding actions required by paragraphs (g)(1), (g)(2), (g)(3)(i), (g)(3)(ii), (h), (j)(1), (k), (l), (m), and (n) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (p)(2)(i), (p)(2)(ii), or (p)(2)(iii) of this AD.

(i) Bombardier Alert Service Bulletin A670BA–32–030, Revision A, including Appendix A, dated October 22, 2010.

(ii) Bombardier Alert Service Bulletin A670BA–32–030, Revision B, dated November 3, 2011.

(iii) Bombardier Alert Service Bulletin A670BA–32–030, Revision C, dated March 13, 2013.

(3) This paragraph provides credit for the corresponding actions required by paragraph (n) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (p)(3)(i), (p)(3)(ii), (p)(3)(iii), (p)(3)(iv), or (p)(3)(v) of this AD.

(i) Bombardier Service Bulletin 670BA–32–040, Revision A, dated March 13, 2013.

(i) Bombardier Service Bulletin 670BA–32–040, Revision B, dated August 6, 2013.

(iii) Bombardier Service Bulletin 670BA–32–040, Revision C, dated November 1, 2013.

(iv) Bombardier Service Bulletin 670BA–32–040, Revision D, dated July 2, 2014.

(v) Bombardier Service Bulletin 670BA–32–040, Revision E, dated November 13, 2014.

(q) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(r) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2010–36R1, dated July 18, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8471.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (s)(3) and (s)(4) of this AD.

(s) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Alert Service Bulletin A670BA–32–030, Revision D, dated August 6, 2013.

(ii) Bombardier Service Bulletin 670BA–32–040, Revision F, dated February 11, 2016, including the following appendices.

(A) Appendix A, Revision A, dated July 12, 2014.

(B) Appendix B, Revision B, dated July 12, 2014.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 14, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 160225147–6898–02]

RIN 0648–BF83

Fisheries of the Exclusive Economic Zone off Alaska; Modifications to Recordkeeping and Reporting Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to modify the recordkeeping and reporting requirements for the groundfish fisheries in the Gulf of Alaska and the Bering Sea/Aleutian Islands management areas. This rule is organized into four actions. Under the first action, NMFS implements a requirement for tender vessel operators to use the applications software ''tLandings'' to prepare electronic landing reports. This action is necessary to improve timeliness and reliability of landing reports for catcher vessels delivering to tender vessels for use in catch accounting and inseason management. Under the second action, NMFS modifies the definition of a buying station. This action is necessary to clarify the different requirements that apply to tender vessels and land-based buying stations. Under the third action, NMFS removes the requirement for buying stations to complete the buying station report because this report is no longer necessary. Under the fourth action, NMFS revises the definition of a mothership to remove unnecessary formatting without changing the substance of the definition. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP), and other applicable laws.

DATES: Effective January 1, 2017.

ADDRESSES: Electronic copies of the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis, and the Categorical Exclusion prepared for this rule may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by email to *OIRA_submission@omb.eop.gov;* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS published a proposed rule to modify the recordkeeping and reporting requirements for the groundfish fisheries in the Gulf of Alaska and the Bering Sea and Aleutian Islands management areas on August 1, 2016 (81 FR 50436). The comment period on the proposed rule ended on August 31, 2016. NMFS received one comment.

Background

This final rule is organized into four actions. The first action implements a requirement for tender vessel operators to use tLandings. The second action modifies the definition of buying station so that tender vessels and land-based buying stations are differentiated under the regulations. The third action removes the requirement for buying stations to complete the buying station report. The fourth action modifies the definition of a mothership to simplify the unnecessary paragraph formatting. The following sections of the preamble describe (1) background on the Interagency Electronic Reporting System and tendering, (2) the need for action, (3) the final rule, (4) the response to comments, and (5) the changes from the proposed rule. The preamble of the proposed rule (81 FR 50436; August 1, 2016) provides a more detailed description of the background and need for this action.

Interagency Electronic Reporting System

The Interagency Electronic Reporting System (IERS) is a collaborative program for reporting commercial fishery landings administered by NMFS, Alaska Department of Fish and Game (ADF&G), and the International Pacific Halibut Commission. The IERS consists of three main components: eLandings—a web-based application for immediate harvest data upload from internet-capable vessels or processors; seaLandings—a desktop application for vessels at sea without internet capability that transmits reports by satellite phone; and tLandings—a software application for tender vessels that records landings data on a USB flash drive (''thumb drive'') that includes all of the data fields required under IERS. NMFS requires all shoreside or floating processors that hold a Federal processing permit to use eLandings or other NMFS-approved software to submit landing reports for all groundfish species.

Tendering

A tender vessel is defined under § 679.2 as a vessel that is used to transport unprocessed fish or shellfish received from another vessel to an associated processor. An associated processor is defined under § 679.2 as having a contractual relationship with a buying station to conduct groundfish buying station activities for that processor. The contractual relationship in the Federal regulations creates joint responsibility for recordkeeping and reporting. For more information on tendering, see Section 1.5 of the RIR.

Need for This Final Rule

This action is necessary to enable NMFS to identify tender vessel deliveries and to provide reliable, expeditious data for catch accounting and inseason management of fisheries with tender vessel deliveries. In addition, this action is necessary to correct and clarify other regulations in 50 CFR part 679 that are related to recordkeeping and reporting by tender vessels and associated processors.

Prior to this final rule, when a tender vessel received catch from a vessel, the tender vessel operator completed a paper fish ticket. Once the transfer was complete, the vessel operator signed the paper fish ticket acknowledging the transfer of catch and agreeing to the information provided. When the tender vessel delivered the catch to the processor, the tender vessel operator provided the paper fish ticket to the processor. The processor then verified the information and manually entered the fish ticket data into eLandings to create a landing report. Landing reports are required to be submitted to NMFS by noon of the day following the delivery. The processor's manual entry of fish ticket data, including review and correction of the data, sometimes made it difficult for the processor to meet this submission deadline and delayed the availability of the tender vessel landing data to NMFS.

The lack of electronic data from tenders reduced data reliability and timeliness. Additionally, with the lack of electronic data from tenders, NMFS was unable to differentiate deliveries to tender vessels from deliveries to processors unless the processor voluntarily entered the tender vessel identification number in the eLandings report. NMFS had, in the past, raised concerns about landings data reliability and timeliness in analyses presented to the North Pacific Fishery Management Council and fishery participants. The tLandings requirement reduces data entry errors and the time required to manually enter fish tickets. Requiring tLandings reduces the likelihood of a processor needing to recall a tender vessel if a fish ticket is illegible or incorrectly filled out. Additionally, requiring tLandings eliminates the need for comprehensive manual data entry by processor staff, simplifying and expediting the data transmission to NMFS.

Data timeliness and reliability are paramount to effective inseason

management. Almost real-time access to the data is particularly important for fast-paced fisheries that operate under small total allowable catch limits, constraining prohibited species catch (PSC) limits, or that have inconsistent and unpredictable levels of fishing effort. NMFS requires timely data for the successful management of these fisheries. In addition, NMFS uses timely data for any catch share program that involves transferable allocations of target species. NMFS inseason management and Office of Law Enforcement rely on the data provided through eLandings to monitor compliance with requirements that quota holders not exceed their allocations. Management and enforcement of PSC-limited and catch share fisheries become more difficult when data access is delayed. For more information on the potential implications of the lack of electronic data entry on management, see Sections 1.3 and 1.8 of the RIR.

This rule requires tenders to use tLandings. tLandings is a computer application used on computers on board tender vessels to create electronic landing reports. The tLandings application is loaded onto a thumb drive; the tender vessel operator creates the landing reports and stores them on the thumb drive. The mandatory use of tLandings will provide a streamlined data entry mechanism that ensures efficient, precise data transmission.

This Final Rule

Action 1: Require Tender Vessel Operators To Use tLandings

Action 1 of this rule requires tender vessel operators to use tLandings to prepare electronic landing reports. Action 1 is necessary to improve data quality for deliveries made to tender vessels.

Under this rule, the eLandings user (defined as a representative of a processor under § 679.2, *i.e.,* an employee) is required to supply the tender vessel operator with a ''configured'' tLandings application for computer installation prior to the tender vessel operator taking delivery of fish or shellfish from a fishing vessel. A configured tLandings application is preloaded with a list of the authorized users, a species list, and other useful data for the associated processor and tender vessel operator. The tender vessel operator must record the required information in tLandings for each delivery the tender vessel accepts. Once the tender vessel delivers the catch to the associated processor, the user (as defined at § 679.2) is required to complete the eLandings landing report by uploading the tLandings data through the Processor Tender Interface component of eLandings. After the completion of the delivery, the processor may sort the catch and update the landing data appropriately.

The processor will continue to be subject to the time limits for data submission specified under § 679.5(e). For shoreside processors and stationary floating processors, users must submit a landing report for each delivery by 1200 hours, Alaska local time, of the day following completion of the delivery (§ 679.5(e)(5)(ii)). These processors have until 1200 hours, Alaska local time, of the third day following completion of the delivery to submit a revised landing report after sorting has occurred. Under this rule, tender vessels delivering to shoreside processors or stationary floating processors are required to abide by these submittal time limits.

Under this rule, the tender vessel operator is responsible for completing the tLandings landing report and submitting it to the processor. This creates a joint responsibility for the tLandings landing report information for the tender vessel operator and the processor. Section 1.9.4 of the RIR provides additional detail on the monitoring and enforcement of the tLandings requirements.

To use tLandings, each tender vessel needs a laptop computer with a numeric key pad, a basic laser printer with ink cartridges and paper, a magstripe reader, and thumb drives that contain the tLandings application. NMFS estimates that using tLandings will increase the annual cost to tender vessels from $1,000 to $2,300. Section 1.4 of the RIR describes that most tender vessels are voluntarily using tLandings to report Federal groundfish landings, and many are required to use tLandings to report landings made in fisheries managed by the State of Alaska (State). Therefore, the total additional costs and burden on tender vessel operations are expected to be limited. See Section 1.9.1.1 of the RIR for more information on the estimated cost of equipment.

Operating the tLandings application requires some training and practice for both the tender vessel operators and processor staff. NMFS assumes that the initial and ongoing training costs to use tLandings will likely be shared by NMFS and the processor using tender vessels. NMFS may bear an initial cost for training processors on the use of tLandings, after which it will be the processors' responsibility to provide training for their tender vessel operators. NMFS estimates that it will require a full day of initial training for new tLandings users. Section 1.9.1.2 of the RIR describes projected training costs in more detail.

Because processors are already subject to an eLandings reporting requirement, processors likely have staff proficient with the IERS software, so there is not expected to be significant additional training required for the tLandings requirement.

Under this rule, NMFS will add a data field to the tLandings application to track the location of tenders when they take deliveries from vessels. The tender vessel operator is required to report the vessel's latitude and longitude at the time of each vessel delivery. This data is necessary to improve information on tender vessel activity and vessel delivery patterns when delivering to a tender vessel as opposed to a processor. This data field is not expected to add a reporting burden on tender vessel operators.

Section 1.5.1 of the RIR estimates that 30 tender vessels received Federal groundfish in the BSAI and GOA in 2015. Those tender vessels delivered to eight processors. Many tender vessels that operate in the Federal groundfish fisheries also operate in the State groundfish fisheries. Under State regulations these tender vessels are already subject to a State tLandings requirement and may already be equipped with tLandings from ADF&G. In 2015, 21 of the 30 tender vessels also took delivery of State groundfish. NMFS expects that there will be minimal additional cost for these tender vessels to also use tLandings for Federal groundfish. The tLandings requirement under this rule affects nine tender vessels. The eight processors that received Federal groundfish from tender vessels in 2015 also received State groundfish from tender vessels; therefore, the effect of this rule on processors is estimated to be minimal.

Action 2: Differentiate Tender Vessels From Buying Stations

Action 2 of this rule revises the definitions of tender vessel and buying station for improved clarity to ensure that the reporting requirements that are applicable to tender vessels and land-based buying stations are clear to the public. Prior to this final rule, under § 679.2, the definition of a buying station includes both tender vessels and land-based buying stations. Under § 679.2, tender vessel is separately defined as a vessel used to transport unprocessed fish or shellfish received from another vessel to an associated processor. While many recordkeeping and reporting requirements that apply to buying stations should include both

tender vessels and land-based buying stations, not all of the reporting requirements that apply to buying stations should apply to both tender vessels and land-based buying stations. Additionally, while a tender vessel may be associated with a shoreside processor, stationary floating processor, or mothership, a land-based buying station is only associated with a shoreside processor. Action 2 does not revise or modify the specific provisions of reporting requirements, but clarifies who is responsible for each requirement.

Action 3: Remove the Buying Station Report Requirement

Action 3 of this rule removes the requirement in § 679.5(d) for a buying station to submit a Buying Station Report. The most recent year of landing report data in 2015 shows that all 54 active buying stations are associated with shoreside processors that use eLandings. NMFS receives the landing data it needs through eLandings, and so does not need to require that the data be submitted in a Buying Station Report. Removing the requirement to submit a Buying Station Report removes a duplicative reporting requirement and reduces the burden on the regulated public. Buying stations will continue to be required to submit landing reports using eLandings.

To implement Action 3, this rule modifies references in the regulations to clarify whether certain recordkeeping and reporting requirements apply to tender vessels, buying stations, or both. Additionally, this rule removes the qualifier ''land-based'' from references to buying stations in the regulations because buying station is defined in the regulations as a land-based entity. Finally, NMFS revises the definition of ''manager'' to effectively include ''stationary floating processor'' managers.

Action 4: Revise Mothership Definition

Action 4 of this rule revises the definition of mothership in § 679.2 to simplify the structure of the definition by moving the text of paragraph (1) into the main body of the definition and deleting reserved paragraph (2). This minor technical correction does not substantively change the definition of a mothership.

Comments and Responses

NMFS received one comment letter from the public that contained one unique substantive comment during the public comment period for the proposed rule to implement these four actions. NMFS' response to this comment is presented below.

Comment: Will tender vessels that tender IFQ halibut need to use tLandings to submit landing reports?

Response: No. Tender vessels are not required to use tLandings for IFQ halibut. This rule does not alter the existing recordkeeping and reporting requirements for the Individual Fishing Quota (IFQ) Program. The final rule is modified as described below to clarify that tender vessels that take deliveries of non-IFQ groundfish will be subject to this rule.

Changes From the Proposed Rule

This final rule includes changes to the regulatory text published in the proposed rule.

This final rule includes a change to the regulatory text that was made in response to the comment received on the proposed rule to clarify who is required to use tLandings under this rule. The proposed rule did not make clear that the tLandings rule will not apply to tender vessels that take IFQ halibut or sablefish, Community Development Quota (CDQ) halibut, or Crab Rationalization Program (CR) crab. While tenders are not regularly used in any of these fisheries, several minor modifications to the regulatory text in the final rule will make this distinction clear.

The tLandings application is not configured to accommodate reporting of IFQ species or CDQ halibut. In addition, the IFQ species and CDQ halibut are reported to NMFS on different landing reports than are used for non-IFQ groundfish species. IFQ halibut and sablefish and CDQ halibut are reported to NMFS on a Registered Buyer landing report. CR crab are reported on a Registered Crab Receiver IFQ crab landing report. Groundfish, other than IFQ sablefish, are required to be reported on a shoreside processor, stationary floating processor, or Community Quota Entity floating processor landing report. Only tender vessels that take deliveries of non-IFQ groundfish in the BSAI and GOA will be required to use and complete tLandings.

The regulatory language in the proposed rule specified that tLandings would be required for fish or shellfish required to be reported on a shoreside processor, stationary floating processor, or Community Quota Entity (CQE) floating processor landing report (''a landing report under § 679.5(e)(5)''). Therefore, to make the needed clarification in the final rule, NMFS revises the regulatory language at new paragraph § 679.5(e)(14) to refer to ''groundfish'' rather than ''fish or shellfish'' and to cross reference the deadlines specified for the shoreside processor, stationary floating processor or CQE floating processor landing report.

This final rule includes three changes to the regulatory text in the proposed rule specific to Action 2. Action 2 is intended to clarify the recordkeeping and reporting requirements applicable to tender vessels and land-based buying stations. As explained in the section ''Action 2: Differentiate Tender Vessels from Buying Stations,'' this rule revises the definitions of tender vessels and buying stations so that a tender vessel is a vessel and a buying station is a land-based entity. The difference in these two operation types requires differentiating the individual responsible for recordkeeping and reporting requirements for each entity to maintain consistency with how NMFS identifies the individual responsible for other operation types. For vessels that are mobile as a part of daily operations, NMFS identifies the individual responsible for recordkeeping and reporting requirements as the operator of that vessel. For shoreside and stationary floating processors (non-mobile operations), NMFS identifies the manager as the individual responsible. In this final rule, NMFS revises the regulatory text at § 679.5(a)(2)(i), (b), (c)(6)(i), and (e)(5)(iii) to clarify that the individual responsible for recordkeeping and reporting requirements on a vessel, including a tender vessel, is the operator, while the individual responsible at a buying station is the manager. This differentiation is consistent with the identification of the operator of a catcher vessel, catcher/processor, and mothership as the individual responsible and the manager of a shoreside processor or stationary floating processor as the individual responsible. These three revisions from the proposed to final rule are necessary to provide consistency with the intent of Action 2.

An additional minor revision to the regulatory text in this final rule will change the abbreviation required to be used in the mothership daily catch and production logbook at § 679.5(c)(6)(vi)(A) from ''BS'' to ''TV.'' This revision is necessary to maintain consistency with the proposed change from ''buying station'' to ''tender vessel'' in that paragraph.

In the proposed rule, NMFS proposed to revise Table 13 to 50 CFR part 679 to remove the notation for a buying station or tender vessel to complete a buying station report. In keeping with the intent of Action 3 of this rule, NMFS will

remove the entire row pertaining to the buying station report rather than only removing the notation.

Classification

Pursuant to section 304(b)(1)(A) and section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the BSAI FMP, the GOA FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule (81 FR 50436; August 1, 2016) and the preamble to this final rule serve as the small entity compliance guide for this action. In addition, a user guide for tLandings is available on the NMFS Alaska Region Web site (*https://elandings.atlassian.net/wiki/display/doc/tLandings*).

Final Regulatory Flexibility Analysis

Section 604 of the Regulatory Flexibility Act (RFA) requires an agency to prepare a final regulatory flexibility analysis (FRFA) after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code. The following paragraphs constitute the FRFA for this action.

This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA describes the impacts on small entities, which are defined in the IRFA for this action and not repeated here. Analytical requirements for the FRFA are described in RFA, section 604(a)(1) through (6). The FRFA must contain:

1. A statement of the need for, and objectives of, the rule;

2. A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

4. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;

5. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The ''universe'' of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (*e.g.,* user group, gear type, geographic area), that segment will be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objectives of This Final Rule

The lack of electronic data from tenders reduces data reliability and timeliness. Data timeliness and reliability are paramount to effective inseason management. Almost real-time access to the data is particularly important for fast-paced fisheries that operate under small total allowable catch limits, constraining PSC limits, or that have inconsistent and unpredictable levels of fishing effort. NMFS requires timely data for the successful management of these fisheries. In addition, NMFS uses timely data for any catch share program that involves transferable allocations of target species. NMFS inseason management and Office of Law Enforcement rely on the data provided through eLandings to monitor compliance with requirements that quota holders not exceed their allocations. Management and enforcement of PSC-limited and catch share fisheries become more difficult when data access is delayed.

Additionally, with the lack of electronic data from tenders, NMFS is unable to differentiate deliveries to tender vessels from deliveries to processors unless the processor voluntarily enters the tender vessel identification number in the eLandings report. NMFS has, in the past, raised concerns about landings data reliability and timeliness in analyses presented to the North Pacific Fishery Management Council and fishery participants.

Summary of Significant Issues Raised During Public Comment

NMFS published the proposed rule on August 1, 2016 (81 FR 50436), with comments invited through August 31, 2016. An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. No comments were received that raised significant issues in response to the IRFA specifically; therefore, no changes were made to this rule as a result of comments on the IRFA. However, a comment was received on the entities affected by this rule. For a summary of this comment and the agency's response, refer to the section above titled ''Comments and Responses.''

Number and Description of Directly Regulated Small Entities

For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

The SBA has established size criteria for all other major industry sectors in the United States, including fish

processing businesses. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 750 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Action 1 of this rule affects tender vessels and processors that receive deliveries of groundfish from tender vessels. For the purposes of the FRFA, a tender vessel is categorized as a wholesale business servicing the fishing industry. Most tender vessels are independently owned and operated entities that are contracted with processors. The exceptions are tender vessels owned by processors. NMFS does not have data on the number of employees on tender vessels, and therefore conservatively assumes all tender vessels that are independently owned and operated are small entities.

Of the 30 tender vessels affected by this action, five are owned by processors that are large entities. Therefore, through affiliation, these five tender vessels are not small entities under the SBA definition. The additional 25 independently owned tender vessels are small entities under the SBA definition. In 2015, there were 8 processors that received groundfish deliveries from tender vessels. None of these processors directly regulated by this action qualify as small entities for the purposes of the SBA.

Action 2 of this rule does not add new requirements for tender vessels or buying stations; it only clarifies which requirements the entities are subject to. Therefore this action is expected to have a small positive impact. This action affects the 30 tender vessels and 54 buying stations that were active in 2015.

Action 3 of this rule removes a requirement on participants that is not currently used; therefore, it is expected to have no effect on participants.

Action 4 of this rule revises the definition of mothership to make it more straightforward and does not modify the definition in a substantive way; therefore, it has no effect on participants.

Recordkeeping, Reporting, and Other Compliance Requirements

This rule requires modifications to the current recordkeeping and reporting requirements in the Alaska Interagency Electronic Reporting System collection (OMB Control Number 0648–0515). The modifications include requiring tender vessel operators to complete the data fields on the tLandings tender workstation application for each delivery the tender vessel accepts from a vessel. Additionally, the tender vessel operator is required to provide the completed tLandings application to the processor on delivery. The processor is then required to upload the information provided by the tender vessel operator in the tLandings application into the eLandings landing report.

This rule removes the Buying Station Report requirement. NMFS receives the landing data it needs through eLandings, and does not need the data submitted in the Buying Station Report. The Buying Station Report is discontinued from any future use. Removing the requirement to submit a Buying Station Report removes a duplicative reporting requirement and reduces the burden on the regulated public. Buying stations will continue to be required to submit landing reports using eLandings.

Description of Significant Alternatives to This Rule That Minimize Economic Impacts on Small Entities

Under each action, NMFS considered two alternatives—the no action alternative and the action alternative. NMFS did not identify any other alternatives that meet the objectives of these actions at a lower cost and reduce economic impact on small entities. The no action alternative for Action 1 would have maintained the existing process of tender vessel operators completing paper fish tickets for each delivery and giving the information to the processor to transcribe and upload into eLandings. Maintaining the manual writing and submission of tender delivery data would not have met the objective of providing timely and accurate landing data.

To help reduce the burden of this regulation on small entities and minimize their costs, NMFS will develop the tLandings tender workstation application and provide that at no cost to participants to provide services and products useful to the industry. NMFS will also provide user support and training. Additionally, NMFS will share some of the training costs for processors to learn how to use tLandings.

The action alternatives for Actions 2, 3, and 4 have been determined to have either a small positive effect or no effect on participants, and therefore are not discussed further.

Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0515. Public reporting burden is estimated to average per response: 15 minutes for IERS application processor registration; 35 minutes for eLandings landing report; 35 minutes for manual landing report; 15 minutes for catcher/processor or mothership eLandings production report; and 35 minutes for tLandings landing report.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 3, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 679 as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

§ 902.1 [Amended]

■ 2. In § 902.1, in the table in paragraph (b), under the entry ''50 CFR'' remove the entry for ''679.5(d).''

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 4. In § 679.2, revise the definitions for ''Buying station'', ''Manager'', ''Mothership'', ''Tender vessel'', and ''User'' to read as follows:

§ 679.2 Definitions.

* * * * *

Buying station means a land-based entity that receives unprocessed groundfish from a vessel for delivery to a shoreside processor and that does not process those fish.

* * * * *

Manager, with respect to any shoreside processor, stationary floating processor, or buying station, means the individual responsible for the operation of the processor or buying station.

* * * * *

Mothership means a vessel that receives and processes groundfish from other vessels.

* * * * *

Tender vessel means a vessel that is used to transport unprocessed fish or shellfish received from another vessel to an associated processor.

* * * * *

User means, for purposes of IERS and its components including eLandings and tLandings, an individual representative of a Registered Buyer; a Registered Crab Receiver; a mothership or catcher/processor that is required to have a Federal Fisheries Permit (FFP) under § 679.4; a shoreside processor or SFP and mothership that receives groundfish from vessels issued an FFP under § 679.4; any shoreside processor or SFP that is required to have a Federal processor permit under § 679.4; and his or her designee(s).

* * * * *

■ 5. In § 679.5:
■ a. Revise paragraphs (a)(2)(i), (b), and (c)(6)(i);
■ b. Remove paragraph (c)(6)(viii)(E);
■ c. Remove and reserve paragraph (d);
■ d. Revise paragraphs (e)(3)(i), (e)(5)(i)(A)(*7*), and (e)(5)(iii); and
■ e. Add paragraph (e)(14).

The revisions and addition read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(a) * * *

(2) * * *

(i) The operator of a catcher vessel, catcher/processor, mothership, or tender vessel (hereafter referred to as the operator) and the manager of a shoreside processor, SFP, or buying station (hereafter referred to as the manager) are each responsible for complying with the applicable R&R requirements in this section and in § 679.28.

* * * * *

(b) *Representative.* The operator of a catcher vessel, mothership, catcher/processor, or tender vessel or manager of a shoreside processor, SFP, or buying station may identify one contact person to complete the logbook and forms and to respond to inquiries from NMFS. Designation of a representative under this paragraph (b) does not relieve the owner, operator, or manager of responsibility for compliance under paragraphs (a)(1) through (6) of this section.

(c) * * *

(6) * * *

(i) *Responsibility.* Except as described in paragraph (f)(1)(v) of this section, the operator of a mothership that is required to have an FFP under § 679.4(b), or the manager of a CQE floating processor that receives or processes any groundfish from the GOA or BSAI from vessels issued an FFP under § 679.4(b), is required to use a combination of mothership DCPL and eLandings to record and report daily processor identification information, delivery information, groundfish production data, and groundfish and prohibited species discard or disposition data. The operator or manager must enter into the DCPL any information for groundfish received from catcher vessels, groundfish received from processors for reprocessing or rehandling, and groundfish received from an associated tender vessel.

* * * * *

(e) * * *

(3) * * *

(i) *Operation type.* Select the operation type from the dropdown list.

* * * * *

(5) * * *

(i) * * *

(A) * * *

(*7*) If the delivery is received from a buying station, indicate the name of the buying station. If the delivery is received from a tender vessel, enter the ADF&G vessel registration number.

* * * * *

(iii) *Compliance.* By using eLandings, the User for the shoreside processor or SFP and the operator for the catcher vessel or tender vessel or manager of the buying station providing information to the User for the shoreside processor or SFP accept the responsibility of and acknowledge compliance with § 679.7(a)(10).

* * * * *

(14) *Tender vessel landing report (''tLandings'').* (i) *tLandings.* tLandings is an applications software for preparing electronic landing reports for commercial fishery landings to tender vessels.

(ii) *Tender vessel operator responsibility.* The operator of a tender vessel taking delivery of groundfish that is required to be reported to NMFS on a landing report under paragraph (e)(5) of this section must use tLandings to enter information about each landing of groundfish and must provide that information to the User defined under § 679.2.

(iii) *User responsibility.* The User must configure and provide the tender vessel operator with the most recent version of the tLandings tender workstation application prior to the tender vessel taking delivery of groundfish.

(iv) *Information entered for each groundfish delivery.* The tender vessel operator must log into the configured tLandings tender workstation application and provide the information required on the computer screen. Additional instructions for tLandings is on the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

(v) *Submittal time limit.* (A) The tender vessel operator must provide the landing information in tLandings to the User at the commencement of the transfer or offload of groundfish from the tender vessel to the processor.

(B) The User must upload the data recorded in tLandings by the tender vessel to prepare the initial landing report for a catcher vessel delivering to a tender vessel that is required under paragraph (e)(5) of this section within the submittal time limit specified under paragraph (e)(5).

(vi) *Compliance.* By using tLandings, the User and the tender vessel operator providing information to the User accept the responsibility of and acknowledge compliance with § 679.7(a)(10).

* * * * *

■ 6. In § 679.7, revise paragraph (a)(11) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(11) *Buying station or tender vessel—*(i) *Tender vessel.* Use a catcher vessel or catcher/processor as a tender vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

(ii) *Associated processor.* Function as a tender vessel or buying station without an associated processor.

* * * * *

■ 7. Revise table 13 to part 679 to read as follows:

TABLE 13 TO PART 679—TRANSFER FORM SUMMARY

If participant type is . . .	And has . . . Fish product onboard	And is involved in this activity	VAR [1]	PTR [2]	Transship [3]	Departure report [4]	Dockside sales receipt [5]	Landing receipt [6]
Catcher vessel greater than 60 ft LOA, mothership, or catcher/processor.	Only non-IFQ groundfish.	Vessel leaving or entering Alaska.	X					
Catcher vessel greater than 60 ft LOA, mothership, or catcher/processor.	Only IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab.	Vessel leaving Alaska.	.....	.....	.....	X		
Catcher vessel greater than 60 ft LOA, mothership, or catcher/processor.	Combination of IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab and non-IFQ groundfish.	Vessel leaving Alaska.	X	.....	.....	X		
Mothership, catcher/processor, shoreside processor, or SFP.	Non-IFQ groundfish.	Shipment of groundfish product.	.....	X				
Mothership, catcher/processor, shoreside processor, or SFP.	Donated PSC	Shipment of donated PSC.	.....	X				
Registered Buyer	IFQ sablefish, IFQ halibut, or CDQ halibut.	Transfer of product.	.....	X				
A person holding a valid IFQ permit, IFQ hired master permit, or Registered Buyer permit.	IFQ sablefish, IFQ halibut, or CDQ halibut.	Transfer of product.	.....	.....	.....	.....	XXX	
Registered Buyer	IFQ sablefish, IFQ halibut, or CDQ halibut.	Transfer from landing site to Registered Buyer's processing facility.	.....	.....	.....	.....	.....	XX
Vessel operator	Processed IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab.	Transshipment between vessels.	.....	.....	XXXX			
Registered Crab Receiver.	CR crab	Transfer of product.	.....	X				
Registered Crab Receiver.	CR crab	Transfer from landing site to RCR's processing facility.	.....	.....	.....	.....	.....	XX

[1] A vessel activity report (VAR) is described at § 679.5(k).
[2] A product transfer report (PTR) is described at § 679.5(g).
[3] An IFQ transshipment authorization is described at § 679.5(l)(3).
[4] An IFQ departure report is described at § 679.5(l)(4).
[5] An IFQ dockside sales receipt is described at § 679.5(g)(2)(iv).
[6] A landing receipt is described at § 679.5(e)(8)(vii).
X indicates under what circumstances each report is submitted.
XX indicates that the document must accompany the transfer of IFQ species from landing site to processor.
XXX indicates receipt must be issued to each receiver in a dockside sale.
XXXX indicates authorization must be obtained 24 hours in advance.

§§ 679.2, 679.5, 679.7, and 679.51 and Table 1b to Part 679 [Amended]

■ 8. At each of the locations shown in the ''Location'' column, remove the phrase indicated in the ''Remove'' column and replace it with the phrase indicated in the ''Add'' column for the number of times indicated in the ''Frequency'' column.

Location	Remove	Add	Frequency
§ 679.2 ''Agent'' (1)	buying station	buying station, tender vessel	1
§ 679.2 ''Agent'' (2)	buying station	buying station or tender vessel	1
§ 679.2 ''Associated processor''	buying station	buying station or tender vessel	3
§ 679.2 ''Shoreside processor''	buying stations	buying stations, tender vessels	1
§ 679.5(a)(2)(ii)	or buying station	buying station, or tender vessel	1
§ 679.5(a)(3)(ii)	catcher vessels and buying stations	catcher vessels, buying stations, and tender vessels	1
§ 679.5(a)(3)(iii)	catcher vessel or buying station	catcher vessel, buying station, or tender vessel	1
§ 679.5(c)(1)(vi)(B)(*4*)	or buying station	buying station, or tender vessel	1
§ 679.5(c)(3)(ii)(A)(*3*)	or buying station	buying station, or tender vessel	1
§ 679.5(c)(3)(viii)	buying station	buying station, tender vessel	1
§ 679.5(c)(3)(x)	buying station	buying station, tender vessel	1
§ 679.5(c)(4)(ii)(A)(*3*)	or buying station	buying station, or tender vessel	1
§ 679.5(c)(4)(viii)	buying station	buying station, tender vessel	1
§ 679.5(c)(4)(x)	buying station	buying station, tender vessel	1
§ 679.5(c)(6)(ii)(A)	buying station	tender vessel	1
§ 679.5(c)(6)(vi) introductory text	buying station	tender vessel	1
§ 679.5(c)(6)(vi)(A)	BS	TV	1
§ 679.5(c)(6)(vi)(A)	buying station	tender vessel	1
§ 679.5(c)(6)(vi)(B)	buying station	tender vessel	1
§ 679.5(c)(6)(vi)(C)	buying station	tender vessel	1
§ 679.5(c)(6)(vi)(F)	buying station	tender vessel	1
§ 679.5(c)(6)(vi)(H)	buying station	tender vessel	2
§ 679.5(c)(6)(vii)	buying station	tender vessel	1
§ 679.5(c)(6)(viii)(A)	buying station	tender vessel	1
§ 679.5(e)(3)(viii)	buying station	buying station, tender vessel,	1
§ 679.5(e)(5)(i) introductory text	buying station	buying station or tender vessel	1
§ 679.5(e)(5)(i)(A)(*6*)	buying station	buying station or tender vessel	1
§ 679.5(e)(5)(i)(C)(*1*)	buying station	buying station or tender vessel	1
§ 679.5(e)(6)(i) introductory text	buying station	tender vessel	1
§ 679.5(e)(6)(i)(B)(*1*)	buying station	tender vessel	1
§ 679.5(e)(6)(iii)	buying station	tender vessel	1
§ 679.5(f)(1)(v)	buying station	tender vessel	1
§ 679.5(f)(5)(ii)	buying station	buyer station or tender vessel	1
§ 679.5(p)(1)	buying station	tender vessel	1
§ 679.7(d)(4)(i)(C)	buying station	buying station or tender vessel	1
§ 679.51(e)(3)	or buying station	buying station, or tender vessel	1
Table 1b to Part 679	and buying stations	buying stations, and tender vessels	1

[FR Doc. 2016–24457 Filed 10–12–16; 8:45 am]
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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1984

[Docket Number: OSHA–2011–0193]

RIN 1218–AC79

Procedures for the Handling of Retaliation Complaints Under Section 1558 of the Affordable Care Act

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of regulations governing employee protection (retaliation or whistleblower) claims under section 1558 of the Affordable Care Act, which added section 18C to the Fair Labor Standards Act to provide protections to employees who may have been subject to retaliation for seeking assistance under certain affordability assistance provisions (for example, health insurance premium tax credits) or for reporting potential violations of the Affordable Care Act's consumer protections (for example, the prohibition on rescissions). An interim final rule (IFR) governing these provisions and request for comments was published in the **Federal Register** on February 27, 2013. Thirteen comments were received; eleven were responsive to the IFR. This rule responds to those comments and establishes the final procedures and time frames for the handling of retaliation complaints under section 18C, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration (OSHA), investigations by OSHA, appeals of OSHA determinations to an administrative law judge (ALJ) for a hearing de novo, hearings by ALJs, review of ALJ decisions by the Administrative Review Board (ARB) (acting on behalf of the Secretary of Labor), and judicial review of the Secretary of Labor's (Secretary's) final decision. It also sets forth the Secretary's interpretations of the Affordable Care Act whistleblower provision on certain matters.

DATES: This final rule is effective on October 13, 2016.

FOR FURTHER INFORMATION CONTACT: Anh-Viet Ly, Directorate of Whistleblower Protection Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–4624, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2199; email: *OSHA.DWPP@dol.gov.* This is not a toll-free number.

This **Federal Register** publication is available in alternative formats. The alternative formats available are: Large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System), and audiotape.

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act, Public Law 111–148, 124 Stat. 119, was signed into law on March 23, 2010 and was amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, 124 Stat. 1029, that was signed into law on March 30, 2010. The terms ''Affordable Care Act,'' or ''Act,'' or ''ACA'' are used in this rulemaking to refer to the final, amended version of the law.

Section 1558 of the Affordable Care Act amended the Fair Labor Standards Act (FLSA) to add section 18C, 29 U.S.C. 218C (section 18C), which provides protection to employees against retaliation by an employer for engaging in certain protected activities.

Under section 18C, an employer may not retaliate against an employee for receiving a credit under section 36B of the Internal Revenue Code of 1986 (Code) or cost-sharing reductions (referred to as a ''subsidy'' in section 18C) under the Affordable Care Act. In general, section 36B of the Code allows certain individuals to receive the premium tax credit for coverage under a qualified health plan through an Exchange if they are not eligible for health coverage (other than in the individual market) including an offer from their employer of affordable coverage that provides minimum value and if their household income is between 100% and 400% of the federal poverty line. In addition, individuals eligible for the premium tax credit may also qualify for cost-sharing reductions if certain other qualifications are met.

Individuals may qualify for advance payment of the premium tax credit (APTC), which is payment during the year to an individual's insurance provider that pays for part or all of the premiums for a qualified health plan through the Exchange covering the individual and his or her family. Eligibility for APTC is based on the Exchange's estimate of the premium tax credit to which the individual will be entitled on his or her tax return. Filing of an individual's federal income tax return is the process through which an individual claims the premium tax credit, and if APTC was paid for the individual or a member of his or her family, it is also the process through which the individual must reconcile the APTC with the premium tax credit.

Since 2015, under section 4980H of the Code, certain employers (referred to as applicable large employers) must either offer health coverage that is affordable and that provides minimum value to their full-time employees (and offer coverage to their dependents), or be subject to an assessable payment (referred to as an ''employer shared responsibility payment'') payable to the IRS if any full-time employee receives the premium tax credit for coverage through an Exchange. Thus, the relationship between the employee's receipt of the premium tax credit and the potential employer shared responsibility payment imposed on an applicable large employer could create an incentive for an employer to retaliate against an employee. Section 18C protects employees against such retaliation.

Section 18C also protects employees against retaliation because they provided or are about to provide to their employer, the federal government or the attorney general of a state, information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of or amendment made by title I of the Affordable Care Act; testified or are about to testify in a proceeding concerning such violation; assisted or participated, or are about to assist or participate, in such a proceeding; or objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee reasonably believed to be in violation of any provision of title I of the Act (or amendment), or any order, rule, regulation, standard, or ban under title I of the Act (or amendment). Among other provisions, title I of the Affordable Care Act includes a range of health insurance market reforms such as: The prohibition on lifetime and annual dollar limits on essential health benefits, the requirement for non-grandfathered plans to cover certain recommended preventive services with no cost sharing, and a prohibition on pre-existing condition exclusions.

This final rule revises the procedures for the handling of whistleblower complaints under section 18C of the FLSA and sets forth the Secretary's interpretations of the ACA whistleblower provision on certain matters. To the extent possible within the bounds of applicable statutory language, these revised rules are designed to be consistent with the procedures applied to claims under other whistleblower statutes administered by OSHA. Responsibility for receiving and investigating complaints under section 18C has been delegated to the Assistant Secretary for Occupational Safety and Health (Assistant Secretary). Secretary of Labor's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by ALJs are decided by the ARB. Secretary of Labor's Order No. 2–2012 (Oct. 19, 2012), 77 FR 69378 (Nov. 16, 2012).

II. Summary of Statutory Procedures

Section 18C(b)(1) adopts the procedures, notifications, burdens of proof, remedies, and statutes of limitation in the Consumer Product Safety Improvement Act of 2008 (CPSIA), 15 U.S.C. 2087(b). Accordingly, a covered employee (complainant) may file a complaint with the Secretary of Labor (Secretary) within 180 days of the alleged retaliation. Upon receipt of the complaint, the Secretary must provide written notice to the person or persons named in the complaint alleged to have violated section 18C (respondent) of the filing of the complaint, the allegations contained in the complaint, the substance of the evidence supporting the complaint, and the rights afforded the respondent throughout the investigation. The Secretary must then, within 60 days of receipt of the complaint, afford the complainant and respondent an opportunity to submit a response and meet with the investigator to present statements from witnesses, and conduct an investigation.

Section 18C, through the incorporation of CPSIA, provides that the Secretary may conduct an investigation only if the complainant has made a prima facie showing that protected activity was a contributing factor in the adverse action alleged in the complaint and the respondent has not demonstrated, through clear and convincing evidence, that the employer would have taken the same adverse action in the absence of that activity. (*See* § 1984.104 for a summary of the investigative process). OSHA interprets the prima facie case requirement as allowing the complainant to meet this burden through the complaint as supplemented by interviews of the complainant.

After investigating a complaint, the Secretary will issue written findings. If, as a result of the investigation, the Secretary finds that there is reasonable cause to believe that retaliation has occurred, the Secretary must notify the respondent of that finding, along with a preliminary order that requires the respondent to, where appropriate: Take

affirmative action to abate the violation; reinstate the complainant to his or her former position together with the compensation of that position (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and provide compensatory damages to the complainant, as well as all costs and expenses (including attorney fees and expert witness fees) reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

The complainant and the respondent then have 30 days after the date of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing before an ALJ. The filing of objections under section 18C of the FLSA will stay any remedy in the preliminary order except for preliminary reinstatement. If a hearing before an ALJ is not requested within 30 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing before an ALJ is held, the statute requires the hearing to be conducted ''expeditiously.'' The Secretary then has 120 days after the conclusion of any hearing in which to issue a final order, which may provide appropriate relief, or deny the complaint. Until the Secretary's final order is issued, the Secretary, the complainant, and the respondent may enter into a settlement agreement that terminates the proceeding. Where the Secretary has determined that a violation has occurred, the Secretary will order the respondent to, where appropriate: Take affirmative action to abate the violation; reinstate the complainant to his or her former position together with the compensation of that position (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and provide compensatory damages to the complainant, as well as all costs and expenses (including attorney fees and expert witness fees) reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

Within 60 days of the issuance of the final order, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation occurred or the circuit where the complainant resided on the date of the violation.

Section 18C permits the employee to seek de novo review of the complaint by a United States District Court in the event that the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination. The court will have jurisdiction over the action without regard to the amount in controversy, and the case will be tried before a jury at the request of either party.

Finally, section 18C(b)(2) of the FLSA provides that nothing in section 18C shall be deemed to diminish the rights, privileges, or remedies of any employee under any federal or state law or under any collective bargaining agreement, and the rights and remedies in section 18C may not be waived by any agreement, policy, form, or condition of employment.

III. Summary and Discussion of Regulatory Provisions

On February 27, 2013, OSHA published in the **Federal Register** an IFR promulgating rules governing the employee protection provisions of section 1558 of the Affordable Care Act, which added section 18C of the FLSA. 78 FR 13222. OSHA included a request for public comment on the interim final rule by April 29, 2013.

Seven organizations and four individuals filed responsive comments with OSHA within the public comment period. OSHA received comments from Tate and Renner (Renner); the Blue Cross Blue Shield Association (BCBS); the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO); America's Health Insurance Plans (AHIP); the Service Employees International Union (SEIU); the National Federation of Independent Business (NFIB); the United States Chamber of Commerce (Chamber); Thomas O'Grady; DeAnna Beckner; J.I.M. Choate; and N. Menold.

OSHA has reviewed and considered the comments and now adopts this final rule with minor revisions. The following discussion addresses the comments, OSHA's responses, and any other changes to the provisions of the rule. The provisions in the IFR are adopted and continued in this final rule, unless otherwise noted below.

General Comments

Comments Related to Section 2706(b) of the Public Health Service Act

As OSHA explained in the preamble to the IFR (78 FR 13223), section 18C became effective on the date the health care law was enacted, March 23, 2010. The Affordable Care Act also added section 2706(b) to the Public Health Service Act (PHSA), 42 U.S.C. 300gg *et seq.,* as amended by section 1201 of the Affordable Care Act, and section 2706 of the PHSA first became effective for plan years beginning on or after January 1, 2014. The Affordable Care Act added Code section 9815(a) and Employee Retirement Income Security Act (ERISA) section 715(a) to incorporate the provisions of part A of title XXVII of the PHS Act (which includes PHSA section 2706) into the Code and ERISA. Accordingly, PHSA section 2706 is subject to shared interpretive jurisdiction by the Departments of Health and Human Services (HHS), the Treasury (Treasury), and Labor (DOL). Section 2706 of the PHSA is titled ''Non-Discrimination in Health Care'' and provides, in relevant part: ''(b) INDIVIDUALS.—The provisions of section 1558 of the Patient Protection and Affordable Care Act (relating to non-discrimination) shall apply with respect to a group health plan or health insurance issuer offering group or individual health insurance coverage.''

Four commenters (BCBS, AHIP, the Chamber, and AFL–CIO) commented on the discussion in the IFR of the relationship between section 18C and section 2706(b) of the PHSA. OSHA has reviewed these comments and referred them to HHS, Treasury and the DOL's Employee Benefits Security Administration, which share interpretive jurisdiction over section 2706. The IFR included a discussion on PHSA section 2706(b) in the preamble to the rule solely to put the public on notice that section PHSA section 2706(b) includes a reference to section 1558 of the Affordable Care Act. However, the IFR did not include any regulatory provisions aimed at implementing PHSA section 2706(b), nor do these final regulations. Accordingly, interpretive guidance regarding PHSA section 2706(b) is outside to the scope of these regulations.

Comments Regarding OSHA's Compliance With Notice and Comment Rulemaking Procedures

NFIB commented that OSHA should re-issue the rule as a Notice of Proposed Rulemaking (NPRM), complete with an initial regulatory flexibility analysis and that OSHA should also examine whether a Small Business Advocacy Review panel is necessary. The Chamber likewise commented that OSHA has not sufficiently demonstrated that this rulemaking is interpretative and procedural and should have provided an economic analysis under Executive Orders 12866 and 13563, and an initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA). OSHA disagrees, and as explained below, OSHA continues to believe that this rule is procedural and

interpretative, and that it has complied with the applicable requirements for promulgating this rule.

Other General Comments

OSHA received additional general comments from several commenters. Menold expressed general support for the IFR. Choate commented that the final rule should use the word ''judge'' instead of ''ALJ'' when referring to administrative law judges. After consideration, the use of the abbreviation ''ALJ'' has been retained in the final rule as consistent with agency practice.

NFIB expressed general concern that section 18C would lead to an increase in whistleblower complaints that would impair small businesses and expressed the hope that OSHA would work to ensure that its procedures allow an opportunity at the outset for the small business and the employee to resolve a complaint without having to go through a formal investigation and adjudication.

Beckner supported the ''implementation of 'economic reinstatement' or 'front pay' instead of preliminary reinstatement in situations w[h]ere the employer and employee relationship has deteriorated beyond repair'' and the definition of employee to include former employees and applicants.

She also commented that the period of time that must transpire prior to a complainant filing for de novo review in district court is too long, as did O'Grady who suggested that the alternative procedural time periods that precede an employee's right to file a complaint to federal district court should be streamlined in the interest of the complainant who may be in a ''precarious situation'' during those times. He also commented that if the process cannot be streamlined, then once OSHA makes an initial determination that there is a valid complaint the employee should receive an injunction barring further retaliation.

SEIU and the AFL–CIO commented that the rules should include specific provisions requiring employers to post notices regarding whistleblower rights under section 18C.

Finally, Renner noted that section 1558 of the ACA, like other whistleblower laws, is a remedial law and should be construed and applied to further its remedial purposes. Renner also noted there may be some overlap between the protections provided in ERISA section 510 and FLSA section 18C and asked that the Department's comments on the final rule address this issue.

OSHA has not made any changes to the rule in response to these comments. The 90-day and 210-day time periods for filing a complaint in district court are established in the statute, and OSHA cannot change them by regulation. 15 U.S.C. 2087(b)(4). With regard to O'Grady's proposal for injunctive relief, OSHA notes that the statute already provides for the type of relief requested. If it finds reasonable cause to believe that retaliation occurred, the statute requires OSHA to issue findings and an order containing relief including, where appropriate, reinstatement. 15 U.S.C. 2087(b)(2). Under the statute, OSHA's order of reinstatement is not stayed by the employer's request for a hearing. *Id.* In addition, OSHA notes that it is unlawful for an employer to engage in further retaliation against employees who pursue whistleblower complaints under the ACA. *See Benjamin* v. *Citationshares Mgmt.,* ARB No. 12–029, 2013 WL 6385831, at *6 (ARB Nov. 5, 2013) (noting ''an employee engages in protected activity if he attempts to provide information of retaliation that violates [a whistleblower statute]'' and holding that employee's recording of information in support of his retaliation claim was protected); *Diaz-Robianas* v. *Fla. Power & Light Co.,* DOL No. 92–ERA–10, 1996 WL 171408, at *5 (Off. Admin. App. Jan. 19, 1996) (noting under prior version of Energy Reorganization Act that the statute ''requires employers to refrain from unlawfully motivated employment discrimination, and a complaint that an employer has violated this requirement is protected''); *McClendon* v. *Hewlett Packard, Inc.,* 2006–SOX–00029, 2006 WL 6577175 at *76 (ALJ Oct. 5, 2006) (holding that filing a Sarbanes-Oxley Act whistleblower complaint is in itself a protected activity); *cf. Young* v. *CSX Transp., Inc.,* 42 F. Supp. 3d 388, 2014 WL 4367461, at *5 (N.D.NY. Sept. 4, 2014) (acknowledging employer's concession that filing a retaliation claim with OSHA is protected under the Federal Railroad Safety Act). If an employee believes an employer is retaliating against him for pursuing an ACA whistleblower complaint, the employee should contact OSHA.

With regard to NFIB's comments regarding the impact on small employers and the opportunities available for early resolution of whistleblower complaints, OSHA agrees that resolution of whistleblower complaints as early in the investigation process as possible is often the best outcome for both parties. Accordingly, OSHA's Whistleblower Investigations Manual encourages whistleblower investigators to actively assist parties in reaching an agreement, where possible. *See* OSHA Whistleblower Investigations Manual, at 6–12 (Jan. 28, 2016), available at *http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-03-007.pdf.* Additionally, in August 2015, OSHA issued a directive allowing its regional offices to implement Early Resolution Programs in which, at the parties' request, OSHA would make a neutral ADR coordinator, unconnected with the investigation, available to assist the parties in achieving an early resolution to the whistleblower case either upon the filing of the whistleblower complaint or at any time up to the completion of OSHA's investigation. Alternative Dispute Resolution (ADR) Processes for Whistleblower Protection Program (Aug. 18, 2015), available at *http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-03-006.pdf.*

With respect to SEIU and AFL–CIO's comment that OSHA should require employers to post notices regarding section 18C's protections, OSHA is not adding such a requirement to these rules. However, OSHA notes that posting of a notice regarding whistleblower rights is one of the common non-monetary remedies that OSHA orders in meritorious whistleblower cases. OSHA believes that such notices can play a significant role in ameliorating the chilling effect that retaliation has on employees who might otherwise report violations of the law. Additionally, OSHA has worked with other agencies that implement the Affordable Care Act to ensure that information about the whistleblower provision is included in notices and public information that those agencies provide to employees and employers.

Finally, OSHA generally agrees with Renner's observation that section 1558 of the ACA, like other whistleblower laws, is a remedial law and should be construed and applied to further its remedial purposes. With regard to Renner's comment regarding the potential overlap between ERISA section 510 and FLSA section 18C, OSHA notes that Renner is correct that some complainants may have claims under both ERISA section 510 and FLSA section 18C. Section 18C's whistleblower protections do not replace any protections that a whistleblower may have under ERISA section 510. Whistleblowers may bring claims under either or both statutes if their whistleblowing is protected under both. However, in order to pursue a claim under section 18C either in district court or before the Department of Labor (DOL), the complainant must

file a complaint with OSHA within 180 days of the alleged adverse action. *See* 29 CFR 1984.103(d).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Section 1984.100 Purpose and Scope

This section describes the purpose and scope of the regulations implementing FLSA section 18C and provides an overview of the procedures covered by these regulations. OSHA has added a statement in subparagraph (b) noting that these rules set forth the Secretary's interpretations of section 18C on certain statutory issues. AFL–CIO commented that OSHA should add a discussion of PHSA section 2706(b) to this section. However for the reasons previously explained, OSHA declines to add such a discussion.

Section 1984.101 Definitions

This section includes general definitions applicable to FLSA section 18C. The definitions of the terms ''employer,'' ''employee,'' and ''person'' from section 3 of the FLSA, 29 U.S.C. 203, apply to these rules and are included here.

Consistent with the Secretary's interpretation of the term ''employee'' in the other whistleblower statutes administered by OSHA [1] and with the Secretary's interpretation of the term ''employee'' under the anti-retaliation provision found at section 15(a)(3) of the FLSA, 29 U.S.C. 215(a)(3),[2] the definition of the term ''employee'' in section 1984.101 also includes former employees and applicants for employment. This interpretation is supported by section 18C's plain language which prohibits retaliation against ''any employee'' and provides that ''[a]n employee who believes that he or she has been discharged or otherwise discriminated against by *any employer* in violation of this section'' may file a complaint with the Secretary of Labor, (emphasis added). Section 18C's broad protection of ''any employee'' from retaliation and provision of a cause of action against ''any employer'' for retaliation makes clear that the parties need not have a current employment relationship. Section 18C's broad protections, like the protections in section 15(a)(3), contrast with the narrower protections of sections 6 and 7 of the FLSA. Sections 6 and 7 provide respectively that an employer must pay at least the minimum wage to ''each of his employees'' and must pay overtime to ''any of his employees,'' and thus require a current employment relationship. *See* 29 U.S.C. 206(a) and (b), 29 U.S.C. 207(a)(1) and (2). Congress chose to use the broad term ''any'' to modify employee and employer in sections 18C(a) and (b), rather than providing more restrictively that, for example, ''no employer shall discharge or in any manner discriminate against any of his employees'' or ''an employee who believes that he or she has been discharged or otherwise discriminated against by his employer'' may file a complaint with the Secretary of Labor. The Supreme Court has made clear that ''any'' has an expansive meaning that does not limit the word it modifies. *See, e.g., Kasten* v. *Saint-Gobain Performance Plastics Corp.,* 131 S. Ct. 1325, 1332 (2011) (noting that the use of ''any'' in the phrase ''filed any complaint'' in section 15(a)(3) of the FLSA ''suggests a broad interpretation that would include an oral complaint''); *U.S.* v. *Gonzales,* 520 U.S. 1, 5 (1997) (''any'' has an expansive meaning, that is, ''one or some indiscriminately of whatever kind'') (internal citations omitted). In addition, the explicit inclusion of reinstatement and preliminary reinstatement (both of which can only be awarded to former employees) among the remedies available for whistleblowers under section 18C, which incorporates 15 U.S.C. 2087(b), confirms that the complainant and the respondent need not have a current employment relationship in order for the complainant to have a claim under section 18C. *See Dellinger* v. *Science Applications Int'l Corp.,* 649 F.3d at 230 n.2 (section 15(a)(3) of the FLSA protects former employees); *cf. Robinson* v. *Shell Oil Co.,* 519 U.S. 337 (1997) (term ''employees'' in anti-retaliation provision of Title VII of the Civil Rights Act of 1964 includes former employees).

No comments were made on this section, other than those discussed in the general comments suggesting additional definitions. OSHA made a minor clarification to the definition of ''respondent'' and added definitions of Exchange and advance payments of the premium tax credit or APTC but has made no other substantive changes to this section.

Section 1984.102 Obligations and Prohibited Acts

This section describes the activities that are protected under section 18C of the FLSA, and the conduct that is prohibited in response to any protected activities. Section 18C(a)(1) protects any employee from retaliation because the employee has ''received a credit under section 36B of the Internal Revenue Code of 1986 or a subsidy under section 1402 of this Act.'' The reference to ''a subsidy under section 1402 of this Act'' in section 18C(a)(1) refers to receipt of a cost-sharing reduction under the Affordable Care Act.

Under section 18C(a)(2), an employer may not retaliate against an employee because the employee ''provided, caused to be provided, or is about to provide or cause to be provided to the employer, the federal government, or the attorney general of a state information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of this title (or an amendment made by this title).'' Section 18C also protects employees who testify, assist or participate in proceedings concerning such violations or are about to do so. Sections 18C(a)(3) and (4), 29 U.S.C. 218C(a)(3) and (4). Finally, section 18C(a)(5) prohibits retaliation because an employee ''objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this title (or amendment), or any order, rule, regulation, standard, or ban under this title (or amendment).'' References to ''this title'' in section 18C(a)(2) and (5) refer to title I of the Affordable Care Act.

In order to have a ''reasonable belief'' under sections 18C(a)(2) and (5) of the FLSA, a complainant must have both a subjective, good faith belief and an objectively reasonable belief that the complained-of conduct violates one of the enumerated categories of law. *See Lockheed Martin Corp.* v. *Admin. Review Bd.,* 717 F.3d 1121, 1132 (10th Cir. 2013) (discussing the reasonable belief standard under analogous

[1] *See, e.g.,* 29 CFR 1980.101(g) (defining employee to include former employees and applicants under the whistleblower provisions in the Sarbanes-Oxley Act); 29 CFR 1978.101 (Surface Transportation Assistance Act); 29 CFR 1981.101 (Pipeline Safety Improvement Act); 29 CFR 1982.101(d) (Federal Railroad Safety Act and the National Transit Systems Security Act); 29 CFR 1983.101(h) (Consumer Product Safety Improvement Act).

[2] *See* Brief for the Secretary of Labor and the Equal Employment Opportunity Commission as Amicus Curiae, *Dellinger* v. *Science Applications Int'l Corp.,* No. 10–1499 (4th Cir. Oct. 15, 2010) (explaining that the phrase ''any employee'' in section 15(a)(3) of the FLSA does not limit an individual's retaliation claims to her current employer, but rather extends protection to prospective employees from retaliation for engaging in protected activity), and Brief of the Secretary of Labor and Equal Employment Opportunity Commission as Amicus Curiae, *Dellinger* v. *Science Applications Int'l Corp.,* No. 10–1499 (4th Cir. Sept. 9, 2011) (same); but *see Dellinger* v. *Science Applications Int'l Corp.,* 649 F.3d 226, 229–31 & n.2 (4th Cir. 2011) (accepting that former employees are protected from retaliation under section 15(a)(3) of the FLSA but holding that applicants for employment are not).

language in the Sarbanes-Oxley Act whistleblower provision, 18 U.S.C. 1514A); *Wiest* v. *Lynch,* 710 F.3d 121, 131–32 (3d Cir. 2013) (same); *Sylvester* v. *Parexel Int'l LLC,* ARB No. 07–123, 2011 WL 2165854, at *12 (ARB May 25, 2011) (same). The requirement that the complainant have a subjective, good faith belief is satisfied so long as the complainant actually believed that the conduct complained of violated the relevant law. *See Sylvester,* 2011 WL 2165854, at *12 (citing *Harp* v. *Charter Commc'ns,* 558 F.3d 722, 723 (7th Cir. 2009)); *Day* v. *Staples, Inc.,* 555 F.3d 42, 54 n.10 (1st Cir. 2009) (quoting *Welch* v. *Chao,* 536 F.3d 269, 277 n.4 (4th Cir. 2008) (''Subjective reasonableness requires that the employee 'actually believed the conduct complained of constituted a violation of pertinent law.'''). The objective reasonableness of a complainant's belief ''is evaluated based on the knowledge available to a reasonable person in the same factual circumstances with the same training and experience as the aggrieved employee.'' *Rhinehimer* v. *U.S. Bancorp Investments, Inc.,* 787 F.3d 797, 811 (6th Cir. 2015) (internal citations and quotations omitted); *Sylvester,* 2011 WL 2165854, at *12. However, the complainant need not show that the conduct complained of constituted an actual violation of law. Pursuant to this standard, an employee's whistleblower activity is protected when it is based on a reasonable, but mistaken, belief that a violation of the relevant law has occurred or is likely to occur. *See Sylvester,* 2011 WL 2165854, at *13 (citing *Welch,* 536 F.3d at 277); *Allen* v. *Admin. Review Bd.,* 514 F.3d 468, 476–77 (5th Cir. 2008); *Melendez* v. *Exxon Chemicals Americas,* ARB No. 96–051, slip op. at 21 (ARB July 14, 2000) (''It is also well established that the protection afforded whistleblowers who raise concerns regarding statutory violations is contingent on meeting the aforementioned 'reasonable belief' standard rather than proving that actual violations have occurred.'').

OSHA received several comments on this section of the interim final rule. For the reasons discussed below, the only change OSHA has made to this section is to revise the section to clarify that, under section 18C(a)(1), an employee has ''received'' a premium tax credit or cost-sharing reduction not only when a premium tax credit is allowed on the individual's tax return but also when an Exchange finds the employee eligible for APTC or for a cost-sharing reduction. At that point, the employee may apply financial assistance to reduce his or her share of the premium cost for coverage purchased through the Exchange, and the prices that the Exchange provides to the employee for plans take into account the employee's eligibility for such assistance. AFL–CIO and SEIU commented that OSHA should clarify that FLSA section 18C(a)(1) protects those who take the preliminary steps, such as gathering information, that are needed to apply for health insurance coverage on an Exchange and to apply for APTC. These commenters were particularly concerned about protecting employees who ask their employers about the health care coverage offered by their employers. These commenters noted that to apply for APTC for health insurance on an Exchange, individuals must provide certain information about their available employer-sponsored insurance options, if any. HHS has developed a form for employees to use in gathering information about any available employer-sponsored insurance options and this form instructs employees to get the information that they need from their employer. As SEIU explained ''[a]s currently proposed, the system puts the burden on individuals to seek coverage information from their employer . . . in order to complete the exchange application. Because of this, it is imperative that the protection against retaliation extend to any preliminary actions taken to receive the tax credit.''

OSHA agrees that these commenters raise compelling concerns regarding the potential for retaliation against employees who seek information from their employer that they need to receive APTC when they purchase health insurance through an Exchange. OSHA declines to change the text of the rule, which generally mirrors the statutory language, in response to these comments. However, OSHA believes that, in certain circumstances, the existing case law under the other whistleblower protection statutes that OSHA administers supports protection for employees who seek information from their employer regarding employer-sponsored health coverage in order to receive APTC for health coverage through an Exchange.

When an employer believes that an employee has received a premium tax credit or cost-sharing reduction and takes action based on that belief, the employer's retaliatory motive is the same whether it arises from an employee's inquiry regarding employer-provided coverage in anticipation of applying for APTC or a cost-sharing reduction through the Exchange, or whether it arises once the applicable Exchange notifies the employer that the employee has qualified for a APTC or a cost-sharing reduction through the Exchange. OSHA's regulations under section 18C and case law under other anti-retaliation statutes make clear that an employer may not retaliate against an employee when the employer knows or suspects that the employee has engaged in activity protected by the statute. *See* 29 CFR 1984.104(e); *see also Reich* v. *Hoy Shoe, Inc.,* 32 F.3d 361, 368 (8th Cir. 1994) (noting under section 11(c) of the Occupational Safety and Health Act (11(c)) that ''[i] t seems clear to this Court that an employer that retaliates against an employee because of the employer's suspicion or belief that the employee filed an OSHA complaint has as surely committed a violation of § 11(c) as an employer that fires an employee because the employer knows that the employee filed an OSHA complaint''); *Saffels* v. *Rice,* 40 F.3d 1546, 1549 (8th Cir. 1994) (retaliation is unlawful under the FLSA if based on an employer's mistaken belief that employees engaged in FLSA-protected activity); *Brock* v. *Richardson,* 812 F.2d 121, 124–25 (3d Cir. 1987) (same).

Similarly, an employer retaliates against an employee when the employer threatens to take action if the employee engages in activity protected under section 18C. *See* 29 CFR 1984.102(a) (defining retaliation to include threats and intimidation). Indeed, courts have long recognized that acts taken in anticipation of an employee's protected activity to dissuade such activity can be actionable under the anti-retaliation provisions of many statutes. *See, e.g., Sauers* v. *Salt Lake County,* 1 F.3d 1122, 1128 (10th Cir. 1993) (noting under Title VII's anti-retaliation provision that ''[a]ction taken against an individual in anticipation of that person engaging in protected opposition to discrimination is no less retaliatory than action taken after the fact''); *Hashimoto* v. *Bank of Hawaii,* 999 F.2d 408, 411 (9th Cir. 1993) (noting that anticipatory employer action that ''discourages the whistle blower before the whistle is blown'' would violate ERISA anti-retaliation statute, even though the employee has not yet filed any formal complaint); *Perez* v. *Fatima/Zahra, Inc.,* No. 14–2337, 2014 WL 2154092 (N.D. Cal. May 22, 2014) (issuing temporary restraining order against employer who threatened employees that they would be fired for talking to investigators); *Solis* v. *SCA Restaurant Corp.,* 938 F. Supp. 2d 380, 389 (E.D.N.Y. 2013) (finding retaliation where employer threatened employees with termination in anticipation of their testimony for Secretary of Labor).

Thus, OSHA believes that an employee's inquiry to his or her employer to gather the information necessary to apply for APTC for

coverage on the Exchange may trigger protection under section 18C if the employee can show that either the employer's belief that the employee had received a premium tax credit, or the employer's desire to deter the employee from taking any further action that would result in the employee's receiving a premium tax credit, contributed to the employer's action against the employee.

Renner commented that the regulations should clarify that an employer's decision to reduce an employee's hours of work to evade application of the Affordable Care Act is unlawful under FLSA section 18C noting that ''the reduction of hours directly reduces the employee's wages and is materially adverse.''

As explained earlier in this preamble, under section 4980H of the Code, applicable large employers must either offer health coverage that is affordable and that provides minimum value to their full-time employees (and offer coverage to their dependents), or be subject to assessment of an employer shared responsibility payment by the IRS if at least one full-time employee receives the premium tax credit. In general, for purposes of section 4980H of the Code, a full-time employee is an employee with an average of at least 30 hours of service per week. To the extent that Renner's comment implies that the whistleblower protections apply if an employer reduces an employee's hours of service to avoid or reduce liability under section 4980H of the Code, OSHA disagrees because section 4980H of the Code does not prohibit an employer from reducing an employee's hours of service in order to avoid a potential employer shared responsibility payment.

However, to the extent that Renner is commenting that reducing work hours in retaliation for activity protected under section 18C is unlawful, OSHA agrees. For instance, if an employer reduces the hours of an employee that the employer knows or suspects of receiving a premium tax credit or subsidy, the employer's actions may violate section 18C if the employee's receipt of the premium tax credit or subsidy was a contributing factor in the employer's decision to reduce the hours, and the employer is unable to show by clear and convincing evidence that it would have taken the same action in the absence of that protected activity. *See* 29 CFR 1984.104(e) (explaining the burdens of proof in Affordable Care Act whistleblower cases); see also 29 U.S.C. 218C(b)(1) (incorporating the burdens of proof in 15 U.S.C. 2087(b)(2)(B)). In addition, OSHA notes that an employer violates section 18C if it threatens employees with reductions in hours in order to dissuade them from applying for APTC for health insurance on an Exchange. *See, e.g., Sauers,* 1 F.3d at 1128. OSHA declines to change the rule in response to Renner's comment because OSHA believes that this issue is adequately addressed in the case law under analogous anti-retaliation provisions and the rule has been drafted to be consistent with OSHA's rules under other whistleblower-protection statutes.

The Chamber commented that OSHA should limit the definition of intimidation as a form of retaliation asserting that the term ''intimidation'' left undefined is overly broad and that ''[t]he conduct that is considered intimidating should not be actionable unless it results in a tangible adverse employment action, such as demotion, negative performance review, failure to promote, assignment of undesirable job duties, a pattern of harassment, and termination.

The Chamber further commented that equitable treatment of the different parties requires OSHA to apply a reasonable belief standard to respondents as well as to complainants. BCBS raised similar concerns regarding the IFR, commenting that OSHA should apply the final rule keeping in mind the unique challenges of implementing the Affordable Care Act, which may make it difficult to determine whether an employer's or issuer's actions are justified by the Affordable Care Act guidance in effect at the time.

After consideration, OSHA declines to amend the rule in response to the Chamber and BCBS's comments. With regard to the Chamber's suggestion that OSHA adopt a reasonable belief requirement for respondents as well as complainants and BCBS's comment that an employer or issuer's actions may be justified based on the Affordable Care Act guidance in effect at the time, OSHA notes that the statutory language includes no ''reasonable belief'' standard for employers. However, OSHA believes that case law under analogous statutes adequately addresses these concerns. For example, the fact that an employer is following the ACA guidance available at the time that an employee blows the whistle may impact whether the employee can show that he had a reasonable belief that the employer was violating the law. Similarly, if an employer takes an action against an employee based on a reasonable, but mistaken, belief of misconduct or another circumstance unrelated to protected activity, the employee's subsequent whistleblower complaint may fail. *See Ledure* v. *BNSF Rwy. Co.,* ARB No. 13–044, 2015 WL 4071574, at *6 (ARB Jun. 2, 2015) (affirming ALJ's conclusion that retaliation did not occur where employer's refusal to allow employee to return to work was based on reasonable, but mistaken, belief that employee was not medically qualified to return to work and not on protected whistleblowing).

With regard to the Chamber's comment that the rule should be changed to limit the definition of ''intimidation,'' OSHA believes that the circumstances in which intimidation constitutes an adverse action under section 18C are adequately addressed by case law under the Department's other whistleblower statutes. While intimidation may be linked with some other form of adverse action, intimidation that is more than trivial may, standing alone, qualify as adverse action. The phrase ''terms, conditions, or other privileges of employment'' does not indicate that actionable adverse action is limited to ''economic'' or ''tangible'' conditions of employment. *See Meritor Savings Bank, FSB* v. *Vinson,* 477 U.S. 57, 64 (1986) (interpreting similar language in Title VII of the Civil Rights Act of 1964); *see also Menendez* v. *Halliburton, Inc.,* ARB Nos. 09–002, 09–003, 2011 WL 4439090 at *11–12 (Sept. 13, 2011), *aff'd, Halliburton, Inc.* v. *Admin. Rev. Bd.,* 771 F.3d 254 (5th Cir. 2014) (interpreting similar language in the Sarbanes-Oxley Act). Rather, adverse action is action that a reasonable employee would find ''materially adverse,'' that is, the action is more than trivial. Specifically, the evidence must show that the action at issue could well have dissuaded a reasonable worker from engaging in protected activity. *See Burlington Northern & Santa Fe R. R. Co.* v. *White,* 548, U.S. 53, 68 (2006); *Halliburton,* 771 F.3d at 261–62 (affirming ARB's finding of adverse action that was not a tangible employment action); *Williams* v. *American Airlines,* ARB No. 09–018, 2010 WL 5535815 at *6–8 (Dec. 29, 2010) (discussing adverse action under the Department's whistleblower statutes). Thus, under this case law, unlawful retaliation would include intimidating an employee for engaging in protected activity when the intimidation would dissuade a reasonable employee from engaging in protected activity.

Section 1984.103 Filing of Retaliation Complaint

This section explains the requirements for filing a retaliation

complaint under section 18C. To be timely, a complaint must be filed within 180 days of when the alleged violation occurs. Under *Delaware State College* v. *Ricks,* 449 U.S. 250, 258 (1980), an alleged violation occurs when the retaliatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision. *E.E.O.C.* v. *United Parcel Serv., Inc.,* 249 F.3d 557, 561–62 (6th Cir. 2001). However, the time for filing a complaint may be tolled for reasons warranted by applicable case law. For example, OSHA may consider the time for filing a section 18C complaint equitably tolled if the complainant mistakenly files a complaint with another agency instead of OSHA within 180 days after becoming aware of the alleged violation. OSHA has revised this section of the rule to note this example of when the time for filling a complaint would be equitably tolled.

Complaints filed under section 18C of the FLSA need not be in any particular form. They may be either oral or in writing. When a complaint is made orally, OSHA will put the complaint in writing. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language. With the consent of the employee, complaints may be filed by any person on the employee's behalf.

OSHA notes that a complaint of retaliation filed with OSHA under the Affordable Care Act is not a formal document and need not conform to the pleading standards for complaints filed in federal district court articulated in *Bell Atlantic Corp.* v. *Twombly,* 550 U.S. 544 (2007) and *Ashcroft* v. *Iqbal,* 556 U.S. 662 (2009). *See Sylvester* v. *Parexel Int'l, Inc.,* ARB No. 07–123, 2011 WL 2165854, at *9–10 (ARB May 26, 2011) (holding whistleblower complaints filed with OSHA under analogous provisions in the Sarbanes-Oxley Act need not conform to federal court pleading standards). Rather, the complaint filed with OSHA under this section simply alerts OSHA to the existence of the alleged retaliation and the complainant's desire that OSHA investigate the complaint. Upon the filing of a complaint, OSHA is to determine whether ''the complaint, supplemented as appropriate by interviews of the complainant'' alleges ''the existence of facts and evidence to make a prima facie showing.'' 29 CFR 1984.104(e). As explained in § 1984.104(e), if the complaint, supplemented as appropriate, contains a prima facie showing, and the respondent does not show clear and convincing evidence that it would have taken the same action in the absence of the alleged protected activity, OSHA conducts an investigation to determine whether there is reasonable cause to believe that retaliation has occurred. *See* 15 U.S.C. 2087(b)(2); 29 CFR 1984.104(e).

No comments were received on this section of the IFR. However, in addition to adding the example noted above of when the time for filing a complaint might be tolled, OSHA changed the term ''email'' in paragraph (d) to ''electronic communication transmittal'' because OSHA has published an on-line complaint form on its Web site, *http://www.whistleblowers.gov/complaint_page.html* .

Section 1984.104 Investigation

This section describes the procedures that apply to the investigation of complaints under section 18C. Paragraph (a) of this section outlines the procedures for notifying the parties and appropriate federal agencies of the complaint and notifying the respondent of its rights under these regulations. Paragraph (b) describes the procedures for the respondent to submit its response to the complaint. Paragraph (c) describes the sharing of information submitted to OSHA during the investigation and the opportunity that each party will have to provide information to OSHA. Paragraph (d) of this section discusses confidentiality of information provided during investigations. Paragraph (e) of this section sets forth the applicable burdens of proof. Paragraph (f) describes the procedures OSHA will follow prior to the issuance of findings and a preliminary order when OSHA has reasonable cause to believe that a violation has occurred.

Section 18C of the FLSA incorporates the burdens of proof set forth in CPSIA, 15 U.S.C. 2087(b). That statute requires that a complainant make an initial prima facie showing that protected activity was ''a contributing factor'' in the adverse action alleged in the complaint, *i.e.,* that the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer's decision. The complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing. A complainant's burden may be satisfied, for example, if he or she shows that the adverse action took place shortly after the protected activity, or at the first opportunity available to the respondent, giving rise to the inference that it was a contributing factor in the adverse action. *See, e.g., Porter* v. *Cal. Dep't of Corrs.,* 419 F.3d 885, 895 (9th Cir. 2005) (holding that years between the protected activity and the retaliatory actions did not defeat a finding of a causal connection where the defendant did not have the opportunity to retaliate until he was given responsibility for making personnel decisions).

If the complainant does not make the required prima facie showing, the investigation must be discontinued and the complaint dismissed. *See Trimmer* v. *U.S. Dep't of Labor,* 174 F.3d 1098, 1101 (10th Cir. 1999) (noting that the burden-shifting framework of the Energy Reorganization Act of 1974, which is the same framework now applicable to section 18C of the FLSA, serves a ''gatekeeping function'' that ''stem[s] frivolous complaints''). Even in cases where the complainant successfully makes a prima facie showing, the investigation must be discontinued if the respondent demonstrates, by clear and convincing evidence, that it would have taken the same adverse action in the absence of the protected activity. Thus, OSHA must dismiss a complaint under section 18C of the FLSA and not investigate further if either: (1) The complainant fails to make the prima facie showing that protected activity was a contributing factor in the adverse action; or (2) the respondent rebuts that showing by clear and convincing evidence that it would have taken the same adverse action absent the protected activity.

Assuming that an investigation proceeds beyond the gatekeeping phase, the statute requires OSHA to determine whether there is reasonable cause to believe that protected activity was a contributing factor in the alleged adverse action. A contributing factor is ''any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision.'' *Marano* v. *Dep't of Justice,* 2 F.3d 1137, 1140 (Fed. Cir. 1993) (internal quotation marks, emphasis and citation omitted) (discussing the Whistleblower Protection Act, 5 U.S.C. 1221(e)(1)); *see, e.g., Lockheed Martin Corp.,* 717 F.3d at 1136. For protected activity to be a contributing factor in the adverse action, '''a complainant need not necessarily prove that the respondent's articulated reason was a pretext in order to prevail,''' because a complainant alternatively can prevail by showing that the respondent's ''reason, while true, is only one of the reasons for its conduct,'' and that another reason

was the complainant's protected activity. *See Klopfenstein* v. *PCC Flow Techs. Holdings, Inc.,* ARB No. 04–149, 2006 WL 3246904, at *13 (ARB May 31, 2006) (quoting *Rachid* v. *Jack in the Box, Inc.,* 376 F.3d 305, 312 (5th Cir. 2004)) (discussing contributing factor test under the Sarbanes-Oxley whistleblower provision), *aff'd sub nom. Klopfenstein* v. *Admin. Review Bd., U.S. Dep't of Labor,* 402 F. App'x 936, 2010 WL 4746668 (5th Cir. 2010).

If OSHA finds reasonable cause to believe that the alleged protected activity was a contributing factor in the adverse action, OSHA may not order relief if the employer demonstrates by ''clear and convincing evidence'' that it would have taken the same action in the absence of the protected activity. *See* 15 U.S.C. 2087(b)(2)(B)(ii). The ''clear and convincing evidence'' standard is a higher burden of proof than a ''preponderance of the evidence'' standard. Clear and convincing evidence is evidence indicating that the thing to be proved is highly probable or reasonably certain. *See, e.g., Clarke* v. *Navajo Express, Inc.,* ARB No. 09–114, 2011 WL 2614326, at *3 (ARB June 29, 2011) (discussing burdens of proof under analogous whistleblower provision in Surface Transportation Assistance Act).

BCBS and the Chamber commented on this section. BCBS commented that the regulations should provide procedures for instances when the complaint names multiple respondents and suggests amending § 1984.104(e)(2)(ii) to read as follows: ''Each respondent knew or suspected . . . .'' BCBS also commented that OSHA should dismiss complaints against respondents who do not have the requisite knowledge of alleged retaliation to justify continuing the complaint process against them, and clarify in § 1984.104(e)(3) that a showing that the adverse action took place shortly after the protected activity would not give rise to the inference that it was a contributing factor in the adverse action in instances when the respondent did not know or suspect that the complainant engaged in a protected activity.

OSHA declines to make these changes because they are unnecessary and could cause confusion. The IFR already does not exclude multiple respondents and adding the word ''each'' to § 1984.104(e)(2)(ii) could be construed as allowing liability only when all respondents have the requisite knowledge or suspicion. Additionally, the IFR already provides a basis for dismissing claims against respondents who lack requisite knowledge or suspicion, such as at § 1984.104(e) where it provides that a ''complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing that protected activity was a contributing factor in the alleged adverse action including that ''[t]he respondent knew or suspected that the employee engaged in the protected activity . . . .''

The Chamber commented that the IFR improperly treated respondents and complainants differently by allowing complainants to receive copies of documents submitted by the respondent, subject to privacy and confidentiality standards, but providing no similar entitlement for respondents. OSHA believes this is incorrect. The IFR and the statute both provide the respondent the right to receive the substance of the evidence supporting the complaint, and OSHA's investigation procedures, which ensure that each party's submissions are available to the other party during the investigation, are further explained in OSHA's Whistleblower Investigations Manual. Nonetheless, to clarify that respondents and complainants are afforded equal access to each other's submissions during the OSHA investigation, OSHA has revised paragraph (c) of this section to reflect its current information sharing practices. Also, throughout this section, minor changes were made as needed to clarify the remaining provisions without changing their meaning.

Section 1984.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue, within 60 days of the filing of a complaint, written findings regarding whether or not there is reasonable cause to believe that the complaint has merit. If the findings are that there is reasonable cause to believe that the complaint has merit, the Assistant Secretary will order appropriate relief, including preliminary reinstatement, affirmative action to abate the violation, back pay with interest, compensatory damages, attorney and expert witness fees, and costs. The findings and, where appropriate, preliminary order, advise the parties of their right to file objections to the findings of the Assistant Secretary and to request a hearing. The findings and, where appropriate, preliminary order, also advise the respondent of the right to request an award of attorney fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the complaint was frivolous or brought in bad faith. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final decision and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed.

This section also provides that interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. In the Secretary's view, 26 U.S.C. 6621 provides the appropriate rate of interest to ensure that victims of unlawful retaliation under section 18C of the FLSA are made whole. The Secretary has long applied the interest rate in 26 U.S.C. 6621 to calculate interest on back pay in whistleblower cases. *See Doyle* v. *Hydro Nuclear Servs.,* ARB Nos. 99–041, 99–042, 00–012, 2000 WL 694384, at *14–15, 17 (ARB May 17, 2000); *see also Cefalu* v. *Roadway Express, Inc.,* ARB No. 09–070, 2011 WL 1247212, at *2 (ARB Mar. 17, 2011); *Pollock* v. *Cont'l Express,* ARB Nos. 07–073, 08–051, 2010 WL 1776974, at *8 (ARB Apr. 10, 2010); *Murray* v. *Air Ride, Inc.,* ARB No. 00–045, 2000 WL 1920347 at *6 (ARB Dec. 29, 2000). Section 6621 of the Code provides the appropriate measure of compensation under section 18C and other DOL-administered whistleblower statutes because it ensures the complainant will be placed in the same position he or she would have been in if no unlawful retaliation occurred. *See Ass't Sec'y* v. *Double R. Trucking, Inc.,* ARB No. 99–061, 1999 WL 529752 at *4 (ARB July 16, 1999) (interest awards pursuant to Code section 6621 are mandatory elements of complainant's make-whole remedy). Code section 6621 provides a reasonably accurate prediction of market outcomes (which represents the loss of investment opportunity by the complainant and the employer's benefit from use of the withheld money) and thus provides the complainant with appropriate make-whole relief. *See E.E.O.C.* v. *County of Erie,* 751 F.2d 79, 82 (2d Cir. 1984) (''[s]ince the goal of a suit under the [Fair Labor Standards Act] and the Equal Pay Act is to make whole the victims of the unlawful underpayment of wages, and since [Code section 6621] has been adopted as a good indicator of the value of the use of money, it was well within'' the district court's

discretion to calculate prejudgment interest under Code section 6621); *New Horizons for the Retarded, Inc.,* 283 NLRB No. 181, 1987 WL 89652, at *2 (NLRB May 28, 1987) (observing that ''the short-term Federal rate [used by Code section 6621] is based on average market yields on marketable Federal obligations and is influenced by private economic market forces''). Similarly, as explained in the IFR, daily compounding of the interest award ensures that complainants are made whole for unlawful retaliation in violation of section 18C. *See* 78 FR 13227.

Finally, this section has been revised to note that when ordering back pay, OSHA also will require the respondent to submit the appropriate documentation to the Social Security Administration allocating the back pay to the appropriate period. Requiring the reporting of back pay allocation to the Social Security Administration serves the remedial purposes of section 18C by ensuring that employees subjected to retaliation are truly made whole. *See Don Chavas, LLC d/b/a Tortillas Don Chavas,* 361 NLRB No. 10, 2014 WL 3897178, at *4–5 (NLRB Aug. 8, 2014) (holding that back pay awards under the National Labor Relations Act should include the allocation of back pay to the appropriate calendar quarters). As the NLRB has explained, when back pay is not properly allocated to the years covered by the award, a complainant may be disadvantaged in several ways. First, improper allocation may interfere with a complainant's ability to qualify for any old-age Social Security benefit. *Id.* at *4 (''Unless a [complainant's] multiyear back pay award is allocated to the appropriate years, she will not receive appropriate credit for the entire period covered by the award, and could therefore fail to qualify for any old-age social security benefit''). Second, improper allocation may reduce the complainant's eventual monthly benefit. *Id.* ''[I]f a backpay award covering a multi-year period is posted as income for 1 year, it may result in SSA treating the [complainant] as having received wages in that year in excess of the annual contribution and benefit base.'' *Id.* Wages above this base are not subject to Social Security taxes, which reduces the amount paid on the employee's behalf. ''As a result, the [complainant's] eventual monthly benefit will be reduced because participants receive a greater benefit when they have paid more into the system.'' *Id.* Finally, ''social security benefits are calculated using a progressive formula: although a participant receives more in benefits when she pays more into the system, the rate of return diminishes at higher annual incomes.'' Therefore, a complainant may ''receive a smaller monthly benefit when a multiyear award is posted to 1 year rather than being allocated to the appropriate periods, even if social security taxes were paid on the entire amount.'' *Id.* The purpose of a make-whole remedy such as back pay is to restore the complainant to the same position the complainant would have occupied absent the prohibited retaliation. That purpose is not achieved when the complainant suffers the disadvantages described above. The Secretary believes that requiring proper social security allocation is necessary to achieve the make-whole purpose of a back pay award. In addition to adding the requirement that the respondent submit the appropriate documentation to the Social Security Administration allocating the back pay to the appropriate period, OSHA has made minor changes throughout this section as needed to clarify the provision without changing its meaning.

OSHA received two comments on the remedy of reinstatement provided for in this section. In the preamble to the IFR, OSHA noted that, while the statute is clear that reinstatement is the presumptive remedy under section 18C of the FLSA, in rare circumstances economic reinstatement or front pay in lieu of actual reinstatement may be appropriate and that reinstatement includes restoration of the terms, conditions, and privileges associated with the complainant's employment as necessary to put the employee in the same position or a position equivalent to the position that the employee held prior to the retaliation. Beckner commented in support of the use of economic reinstatement where the employer-employee relationship has broken down beyond repair.

SEIU commented that OSHA should amend the rule to clarify that reinstatement, including preliminary reinstatement, means full restoration of pay and benefits. SEIU stated that reinstatement requires full restoration to the status quo and includes restoration of duties and hours where those were reduced to reduce an employee's pay. As SEIU correctly noted, OSHA's Whistleblower Investigations Manual, as well as relevant case law under the whistleblower protection statutes that OSHA administers, makes clear that reinstatement is reinstatement to the full status quo prior to the retaliation and would include a restoration of hours and duties as necessary to ensure that the whistleblower is returned to the same position that he or she would have been in absent the retaliation. The statute explicitly requires that the Secretary order the employer ''to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment.'' 15 U.S.C. 2087(b)(3)(B)(ii). If the employee's original position is not available, the employer may return the employee to an equivalent position. *See, e.g., Hobby* v. *Georgia Power Co.,* ARB Nos. 98–166, 98–169, 2001 WL 168898 at *10 (ARB Feb. 9, 2001) (noting that ''[w]hile the remedies section of the Energy Reorganization Act whistleblower provision states that the Secretary 'shall . . . reinstate the [prevailing] complainant to his former position . . .', this text has been construed to mean reinstatement to the same or a *similar* position to the job that was formerly held'') (emphasis original, citations omitted). Because the statutory text and the applicable case law make clear that reinstatement must restore the complainant to the position he would have occupied absent the retaliation or an equivalent position, OSHA has not made any changes to the rule to clarify the term reinstatement in response to SEIU's comment.

Subpart B—Litigation

Section 1984.106 Objections to the Findings and the Preliminary Order and Requests for a Hearing

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of the filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. The filing of objections also is considered a request for a hearing before an ALJ. Although the parties are directed to serve a copy of their objections on the other parties of record, as well as the OSHA official who issued the findings and order, the Assistant Secretary, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards, the failure to serve copies of the objections on the other parties of record does not affect the ALJ's jurisdiction to hear and decide the merits of the case. *See Shirani* v. *Calvert Cliffs Nuclear Power Plant, Inc.,* ARB No. 04–101, 2005 WL 2865915, at *7 (ARB Oct. 31, 2005).

In this section, SEIU repeated its comment that the regulations should clarify that the term ''reinstatement,'' including ''preliminary reinstatement,'' means full restoration of pay and benefits. OSHA's response to this comment is addressed in the discussion of § 1984.105. No substantive changes have been made to this section.

Section 1984.107 Hearings

This section adopts the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR part 18 subpart A. Hearings are to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo, on the record. ALJs continue to have broad discretion to limit discovery where necessary to expedite the hearing. Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The ALJ may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

No comments were received on this section and no changes were made.

Section 1984.108 Role of Federal Agencies

The Assistant Secretary, at his or her discretion, may participate as a party or amicus curiae at any time in the administrative proceedings under section 18C of the FLSA. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an ALJ, petition for review of a decision of an ALJ, including a decision based on a settlement agreement between the complainant and the respondent, regardless of whether the Assistant Secretary participated before the ALJ; or participate as amicus curiae before the ALJ or in the ARB proceeding. Although OSHA anticipates that ordinarily the Assistant Secretary will not participate, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, large numbers of employees, alleged violations that appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The Internal Revenue Service of the United States Department of the Treasury, the United States Department of Health and Human Services, and the Employee Benefits Security Administration of the United States Department of Labor, if interested in a proceeding, also may participate as amicus curiae at any time in the proceedings.

No comments were received on this section. Throughout this section, minor changes were made as needed to clarify the provision without changing its meaning.

Section 1984.109 Decision and Orders of the Administrative Law Judge

This section sets forth the requirements for the content of the decision and order of the ALJ, and includes the standard for finding a violation under section 18C. Specifically, the complainant must demonstrate (*i.e.* prove by a preponderance of the evidence) that the protected activity was a ''contributing factor'' in the adverse action. *See, e.g., Allen,* 514 F.3d at 475 n.1 (''The term 'demonstrates' means to prove by a preponderance of the evidence.''). If the employee demonstrates that the protected activity was a contributing factor in the adverse action, the employer, to escape liability, must demonstrate by ''clear and convincing evidence'' that it would have taken the same action in the absence of the protected activity. *See id.*

Paragraph (c) of this section provides that OSHA's determinations regarding whether to proceed with an investigation under section 18C and whether to make particular investigative findings are discretionary decisions not subject to review by the ALJ. The ALJ hears cases de novo and, therefore, as a general matter, may not remand cases to OSHA to conduct an investigation or make further factual findings. Paragraph (c) also notes that the ALJ can dispose of a matter without a hearing if the facts and circumstances warrant.

Paragraph (d) notes the remedies that the ALJ may order under section 18C and provides that interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. Paragraph (d) has been revised to note that when back pay is ordered, the order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate period. Paragraph (e) requires that the ALJ's decision be served on all parties to the proceeding, the Assistant Secretary, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards. Paragraph (e) also provides that any ALJ decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 14 days after the date of the decision unless a timely petition for review has been filed with the ARB. If no timely petition for review is filed with the ARB, the decision of the ALJ becomes the final decision of the Secretary and is not subject to judicial review.

No comments were received on this section. In addition to the revision noted above regarding the allocation of back pay to the appropriate period, minor changes were made as needed to clarify the provision without changing its meaning.

Section 1984.110 Decision and Orders of the Administrative Review Board

Upon the issuance of the ALJ's decision, the parties have 14 days within which to petition the ARB for review of that decision. If no timely petition for review is filed with the ARB, the decision of the ALJ becomes the final decision of the Secretary and is not subject to judicial review. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing of the petition; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt.

The appeal provisions in this part provide that an appeal to the ARB is not a matter of right but is accepted at the discretion of the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. The ARB has 30 days to decide whether to grant the petition for review. If the ARB does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. If a timely petition for review is filed with the ARB, any relief ordered by the ALJ, except for that portion ordering reinstatement, is inoperative while the matter is pending before the ARB. When the ARB accepts a petition for review, the ALJ's factual determinations will be reviewed under the substantial evidence standard. This section also provides that, based on exceptional circumstances, the ARB may grant a motion to stay an ALJ's preliminary order of reinstatement under section 18C, which otherwise would be effective, while review is conducted by the ARB. The Secretary believes that a stay of an ALJ's preliminary order of reinstatement under section 18C would be appropriate only where the respondent can establish the necessary criteria for equitable injunctive relief, *i.e.,* irreparable injury, likelihood of success on the merits, a balancing of possible harms to the

parties, and the public interest favors a stay.

If the ARB concludes that the respondent has violated the law, it will order the remedies listed in paragraph (d). Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. Paragraph (d) has been revised to note that when back pay is ordered, the order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate period. If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint.

Beckner and Renner commented that the time period for filing a petition for review with the ARB of an ALJ's decision is too short. Beckner commented that allowing both parties only 14 days to petition the ARB to review an ALJ decision appeal is too short and inconsistent with the rule's allowing 30 days to determine whether an ALJ's decision was in error. Renner commented that ''[t]he proper adjudication of whistleblower matters would be enhanced if parties and their counsel can prepare their briefs, and select their issues, thoughtfully. . . . When faced with the unusually short time limit of fourteen (14) days to submit a petition that must list all issues, advocates are likely to overselect. To preserve issues and avoid missing a meritorious claim, they are likely to list every issue that might conceivably apply. While counsel could choose to drop issues between the petition and the brief, requiring counsel to list all the issues in the petition makes it more likely that counsel will then face pressure to brief those issues.'' He added that ''some whistleblowers or their counsel may find the task of reviewing the record to identify all appealable issues so consuming that they miss the short deadline for filing the petition for review.''

Renner also commented that the provision that objections to legal conclusions not raised in petitions for review may be deemed waived should be changed. He specifically suggested that section 1984.110(a) should be amended to read as follows: ''The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived so that the Administrative Review Board may determine that the review presents issues worthy of full briefing.'' He stated that the provision as written could work against the remedial purpose of the law.

After consideration, OSHA declines to alter the time period within which to appeal the decision of an ALJ. We believe that 14 days is sufficient and note that it is consistent with the time periods available under various other whistleblower provisions for which OSHA is responsible, which range from ten business days to 14 calendar days. Compare 29 CFR 1983.109(e) with 29 CFR 1985.109(e); 29 CFR 1987.109(e). OSHA also declines to adopt Renner's additional suggestions relating to this section. First, OSHA declines to extend the time limit to petition for review because the shorter review period is consistent with the practices and procedures followed in OSHA's other whistleblower programs. Furthermore, parties may file a motion for extension of time to appeal an ALJ's decision, and the ARB has discretion to grant such extensions.

OSHA also declines to change the provision that objections to legal conclusions not raised in petitions for review ''may'' be deemed waived. OSHA first notes that the use of the term ''may'' in the IFR was made as a result of comments submitted by Renner on other whistleblower rules recently published by OSHA. *See, e.g.,* Procedures for the Handling of Retaliation Complaints Under Section 219 of the Consumer Product Safety Improvement Act of 2008, 77 FR 40494, 40500–01 (July 10, 2012); Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provision of the Surface Transportation Assistance Act of 1982, as amended, 77 FR 44121, 44131–32 (July 27, 2012). OSHA believes that use of the non-mandatory word ''may'' adequately addresses Renner's underlying concern that grounds not raised in a petition for review may be barred from consideration before the ARB.

In addition to the revision noted above regarding the allocation of back pay to the appropriate period, minor changes were made as needed to clarify this section without changing its meaning.

Subpart C—Miscellaneous Provisions

Section 1984.111 Withdrawal of Complaints, Findings, Objections, and Petitions for Review; Settlement

This section provides the procedures and time periods for withdrawal of complaints, the withdrawal of findings and/or preliminary orders by the Assistant Secretary, and the withdrawal of objections to findings and/or orders. It also provides for approval of settlements at the investigative and adjudicative stages of the case.

No comments were received on this section. Minor changes were made as needed to this section to clarify the provision without changing its meaning.

Section 1984.112 Judicial Review

This section describes the statutory provisions of CPSIA, incorporated into section 18C of the FLSA, for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the ALJ or the ARB to submit the record of proceedings to the appropriate court pursuant to the rules of such court.

No comments were received on this section and no changes were made.

Section 1984.113 Judicial Enforcement

This section describes the Secretary's power under section 18C to obtain judicial enforcement of orders and the terms of settlement agreements. Section 18C incorporates the procedures, notifications, burdens of proof, remedies, and statutes of limitations set forth in CPSIA, 15 U.S.C. 2087(b), which expressly authorizes district courts to enforce orders, including preliminary orders of reinstatement, issued by the Secretary. *See* 15 U.S.C. 2087(b)(6) (''Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order.''). Specifically, reinstatement orders issued at the close of OSHA's investigation are immediately enforceable in district court pursuant to 15 U.S.C. 2087(b)(6) and (7). Section 18C of the FLSA provides, through CPSIA, that the Secretary shall order the person who has committed a violation to reinstate the complainant to his or her former position. *See* 15 U.S.C. 2087(b)(3)(B)(ii). Section 18C of the FLSA also provides, through CPSIA, that the Secretary shall accompany any reasonable cause finding that a violation occurred with a preliminary order containing the relief prescribed by subsection (b)(3)(B) of CPSIA, which includes reinstatement where appropriate, and that any preliminary order of reinstatement shall not be stayed upon the filing of objections. *See* 15 U.S.C. 2087(b)(2)(A) (''The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order.''). Thus, under section 18C of the FLSA, enforceable orders include preliminary orders that contain the relief of reinstatement prescribed by 15 U.S.C. 2087(b)(3)(B). This statutory interpretation is

consistent with the Secretary's interpretation of similar language in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century and Sarbanes-Oxley. *See* Brief for the Intervenor/Plaintiff-Appellee Secretary of Labor, *Solis* v. *Tenn. Commerce Bancorp, Inc.,* No. 10–5602 (6th Cir. 2010); *Solis* v. *Tenn. Commerce Bancorp, Inc.,* 713 F. Supp. 2d 701 (M.D. Tenn. 2010); *but see Bechtel* v. *Competitive Techs., Inc.,* 448 F.3d 469 (2d Cir. 2006); *Welch* v. *Cardinal Bankshares Corp.,* 454 F. Supp. 2d 552 (W.D. Va. 2006) (decision vacated, appeal dismissed, No. 06–2295 (4th Cir. Feb. 20, 2008)). Also, through application of CPSIA, section 18C of the FLSA permits the person on whose behalf the order was issued to obtain judicial enforcement of the order. *See* 15 U.S.C. 2087(b)(7).

No comments were received on this section. OSHA has revised this section slightly to more closely parallel the provisions of the statute regarding the proper venue for an enforcement action.

Section 1984.114 District Court Jurisdiction of Retaliation Complaints

This section sets forth the statutory provisions that allow a complainant to bring an original de novo action in district court, alleging the same allegations contained in the complaint filed with OSHA, under certain circumstances. By incorporating the procedures, notifications, burdens of proof, remedies, and statutes of limitations set forth in CPSIA, 15 U.S.C. 2087(b), section 18C permits a complainant to file an action for de novo review in the appropriate district court if there has been no final decision of the Secretary within 210 days of the filing of the complaint, or within 90 days after receiving a written determination. ''Written determination'' refers to the Assistant Secretary's written findings issued at the close of OSHA's investigation under section 1984.105(a). 15 U.S.C. 2087(b)(4). The Secretary's final decision is generally the decision of the ARB issued under section 1984.110. In other words, a complainant may file an action for de novo review in the appropriate district court in either of the following two circumstances: (1) A complainant may file a de novo action in district court within 90 days of receiving the Assistant Secretary's written findings issued under section 1984.105(a), or (2) a complainant may file a de novo action in district court if more than 210 days have passed since the filing of the complaint and the Secretary has not issued a final decision. The plain language of 15 U.S.C. 2087(b)(4), by distinguishing between actions that can be brought if the Secretary has not issued a ''final decision'' within 210 days and actions that can be brought within 90 days after a ''written determination,'' supports allowing de novo actions in district court under either of the circumstances described above. However, in the Secretary's view, complainants may not initiate an action in federal court after the Secretary issues a final decision, even if the date of the final decision is more than 210 days after the filing of the complaint or within 90 days of the complainant's receipt of the Assistant Secretary's written findings. The purpose of the ''kick-out'' provision is to aid the complainant in receiving a prompt decision. That goal is not implicated in a situation where the complainant already has received a final decision from the Secretary. In addition, permitting the complainant to file a new case in district court in such circumstances could conflict with the parties' rights to seek judicial review of the Secretary's final decision in the court of appeals.

Under section 18C of the FLSA, the Assistant Secretary's written findings become the final order of the Secretary, not subject to judicial review, if no objection is filed within 30 days. See 15 U.S.C. 2087(b)(2). Thus, a complainant may need to file timely objections to the Assistant Secretary's findings in order to preserve the right to file an action in district court.

This section also requires that, within seven days after filing a complaint in district court, a complainant must provide a file-stamped copy of the complaint to the Assistant Secretary, the ALJ, or the ARB, depending on where the proceeding is pending. In all cases, a copy of the complaint also must be provided to the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards. This provision is necessary to notify the Agency that the complainant has opted to file a complaint in district court. This provision is not a substitute for the complainant's compliance with the requirements for service of process of the district court complaint contained in the Federal Rules of Civil Procedure and the local rules of the district court where the complaint is filed. The section also incorporates the statutory provisions which allow for a jury trial at the request of either party in a district court action, and which specify the remedies and burdens of proof in a district court action.

OSHA received two comments on this section that are addressed in the general comments discussion. OSHA made minor changes to this section, substituting the term ''retaliation'' for ''discrimination'' and clarifying that in all cases parties must provide a copy of the district court complaint to the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards. *Section 1984.115 Special Circumstances; Waiver of Rules.*

This section provides that in circumstances not contemplated by these rules or for good cause the ALJ or the ARB may, upon application and notice to the parties, waive any rule as justice or the administration of section 18C of the FLSA requires.

No comments were made on this section and no substantive changes were made.

IV. Paperwork Reduction Act

This rule contains a reporting provision (filing a retaliation complaint, Section 1984.103) which was previously reviewed and approved for use by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The assigned OMB control number is 1218–0236.

V. Administrative Procedure Act

NFIB and the Chamber commented that the IFR should be reissued as a Notice of Proposed Rulemaking. However, the notice and comment rulemaking procedures of section 553 of the Administrative Procedure Act (APA) do not apply ''to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). This rule is a rule of agency procedure, practice, and interpretation within the meaning of that section.

This rule is ''procedural on its face,'' because it sets forth procedures for OSHA to use in investigating complaints under the whistleblower provisions of the ACA, and procedures for the Secretary's adjudication of ACA whistleblower cases. *See U.S. Dep't of Labor* v. *Kast Metals Corp.,* 744 F.2d 1145, 1150, 1152 (5th Cir.1984) (OSHA rule which ''set[] forth procedural steps to guide the agency in exercise of its statutory authority to conduct investigations,'' was ''procedural on its face.''); *see also American Hosp. Assoc.* v. *Bowen,* 834 F.2d 1037, 1050–51 (D.C. Cir. 1987) (holding the same with regard to HHS enforcement plan). The rule is ''primarily directed toward improving the efficient and effective operations of''

the agency. *See Mendoza* v. *Perez,* 754 F.3d 1002, 1023 (D.C. Cir. 2014) (citations omitted) (explaining the difference between procedural and legislative rules). The rule does not alter the rights or interests of the parties to an ACA whistleblower proceeding, which are set forth in the statute and relevant case law. Rather, the rule sets forth the procedures under which the Secretary will investigate and adjudicate ACA whistleblower disputes.

The rule is also interpretative, in part, since it also clarifies certain statutory terms, reminds parties of their existing obligations under the statute, and explains preexisting requirements under the statute. *See Perez* v. *Mortgage Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015), *quoting Shalala* v. *Guernsey Mem'l Hosp.,* 514 U.S. 87, 99 (1995) (noting that interpretative rules are ''issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers'); *see also Mendoza,* 754 F.3d at 1021 (''Interpretative rules are those that clarify a statutory or regulatory term, remind parties of existing statutory or regulatory duties, or merely track preexisting requirements and explain something the statute or regulation already required.'') (internal citations and quotations omitted). Therefore, OSHA was not required to publish a notice of proposed rulemaking in the **Federal Register** and request public comments on this rule. Although it was not required to do so for this procedural and interpretative rule, OSHA sought and considered comments to enable the agency to improve the rules by taking into account the concerns of interested persons.

Furthermore, because this rule is procedural and interpretative rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. OSHA also finds good cause to provide an immediate effective date for this final rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases. Furthermore, most of the provisions of this rule were in the IFR and have already been in effect since February 27, 2013 so a delayed effective date is unnecessary.

VI. Executive Orders 12866 and 13563; Unfunded Mandates Reform Act of 1995; Executive Order 13132

NFIB and the Chamber commented that the IFR failed to comply with Executive Orders 12866 and 13563. OSHA disagrees. The Office of Management and Budget has concluded that this rule is a ''significant regulatory action'' within the meaning of section 3(f)(4) of Executive Order 12866. Executive Order 12866, reaffirmed by Executive Order 13563, requires a full economic impact analysis only for ''economically significant'' rules, which are defined in Section 3(f)(1) of Executive Order 12866 as rules that may ''[h]ave an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' The rule is procedural and interpretative in nature. Because it simply implements procedures necessitated by enactment of section 18C of the FLSA, the rule is expected to have a negligible economic impact and no economic impact analysis under Section 6(a)(3)(C) of Executive Order 12866 has been prepared. For the same reason, and the fact that no notice of proposed rulemaking has been published, the rule does not require a Section 202 statement under the Unfunded Mandates Reform Act of 1995. 2 U.S.C. 1531 *et seq.* Finally, this rule does not have ''federalism implications,'' in that it does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government'' and therefore is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

NFIB and the Chamber commented that the IFR did not comply with the requirements of the Regulatory Flexibility Act (RFA) and that OSHA should have produced an Initial Regulatory Flexibility Analysis (IRFA). NFIB also asserts that a Small Business Advocacy Review panel is warranted. OSHA disagrees. The notice and comment rulemaking procedures of section 553 of the APA do not apply ''to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). Rules that are exempt from APA notice and comment requirements are also exempt from the RFA. *See* SBA Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, at 9 (May 2012); available at: *http://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf**. This is a rule of agency procedure, practice, and interpretation within the meaning of 5 U.S.C. 553; and therefore the rule is exempt from both the notice and comment rulemaking procedures of the APA and the requirements under the RFA. For similar reasons, OSHA does not agree that a Small Business Advocacy Review panel is warranted.

List of Subjects in 29 CFR Part 1984

Administrative practice and procedure, Employment, Health care, Investigations, Reporting and recordkeeping requirements, Whistleblower.

Authority and Signature

This document was prepared under the direction and control of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health.

Signed at Washington, DC, on October 5, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

■ Accordingly, for the reasons set out in the preamble, 29 CFR part 1984 is revised to read as follows:

PART 1984—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 1558 OF THE AFFORDABLE CARE ACT

Subpart A—Complaints, Investigations, Findings, and Preliminary Orders

Sec.

Subpart B—Litigation

Subpart C—Miscellaneous Provisions

Authority: 29 U.S.C. 218C; Secretary of Labor's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary of Labor's Order No. 2–2012 (Oct. 19, 2012), 77 FR 69378 (Nov. 16, 2012).

Subpart A—Complaints, Investigations, Findings, and Preliminary Orders

§ 1984.100 Purpose and scope.

(a) This part implements procedures under section 1558 of the Patient Protection and Affordable Care Act, Public Law 111–148, 124 Stat. 119, which was signed into law on March 23, 2010 and was amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, 124 Stat. 1029, signed into law on March 30, 2010. The terms ''Affordable Care Act'' or ''the Act'' are used in this part to refer to the final, amended version of the law. Section 1558 of the Act amended the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.* (FLSA) by adding new section 18C. 29 U.S.C. 218C. Section 18C of the FLSA provides protection for an employee from retaliation because the employee has received a credit under section 36B of the Internal Revenue Code of 1986, 26 U.S.C. 36B, or a cost-sharing reduction (referred to as a ''subsidy'' in section 18C) under the Affordable Care Act, or because the employee has engaged in protected activity pertaining to title I of the Affordable Care Act or any amendment made by title I of the Affordable Care Act.

(b) This part establishes procedures under section 18C of the FLSA for the expeditious handling of retaliation complaints filed by employees, or by persons acting on their behalf and sets forth the Secretary's interpretations of section 18C on certain statutory issues. These rules, together with those codified at 29 CFR part 18, set forth the procedures under section 18C of the FLSA for submission of complaints, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges (ALJs), post-hearing administrative review, and withdrawals and settlements.

§ 1984.101 Definitions.

As used in this part:

(a) *Advance payments of the premium tax credit* or ''*APTC*'' means advance payments of the premium tax credit as defined in 45 CFR 155.20.

(b) *Affordable Care Act* or ''*the Act*'' means the Patient Protection and Affordable Care Act, Public Law 111–148, 124 Stat. 119 (Mar. 23, 2010), as amended.

(c) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under section 18C of the FLSA.

(d) *Business days* means days other than Saturdays, Sundays, and federal holidays.

(e) *Complainant* means the employee who filed an FLSA section 18C complaint or on whose behalf a complaint was filed.

(f) *Employee* means:

(1) Any individual employed by an employer. In the case of an individual employed by a public agency, the term employee means any individual employed by the Government of the United States: As a civilian in the military departments (as defined in 5 U.S.C. 102), in any executive agency (as defined in 5 U.S.C. 105), in any unit of the judicial branch of the Government which has positions in the competitive service, in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, in the Library of Congress, or in the Government Printing Office. The term employee also means any individual employed by the United States Postal Service or the Postal Regulatory Commission; and any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than an individual who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and who holds a public elective office of that State, political subdivision, or agency, is selected by the holder of such an office to be a member of his personal staff, is appointed by such an officeholder to serve on a policymaking level, is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(2) The term *employee* does not include:

(i) Any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered—and such services are not the same type of services which the individual is employed to perform for such public agency;

(ii) Any employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency that volunteers to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement; or

(iii) Any individual who volunteers their services solely for humanitarian purposes to private non-profit food banks and who receive groceries from the food banks.

(3) The term *employee* includes former employees and applicants for employment.

(g) *Employer* includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(h) *Exchange* means an Exchange as defined in 45 CFR 155.20.

(i) *OSHA* means the Occupational Safety and Health Administration of the United States Department of Labor.

(j) *Person* means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(k) *Respondent* means the employer named in the complaint who is alleged to have violated section 18C of the FLSA.

(l) *Secretary* means the Secretary of Labor or person to whom authority under section 18C of the FLSA has been delegated.

(m) Any future statutory amendments that affect the definition of a term or terms listed in this section will apply in lieu of the definition stated herein.

(n) Any future regulatory revisions that affect the definition of a term or terms listed in this section will apply in lieu of the definition stated herein.

§ 1984.102 Obligations and prohibited acts.

(a) No employer may discharge or otherwise retaliate against, including, but not limited to, intimidating, threatening, restraining, coercing, blacklisting or disciplining, any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee (or an individual acting at the request of the employee), has engaged in any of the activities specified in paragraphs (b)(1) through (5) of this section.

(b) An employee is protected against retaliation because the employee (or an individual acting at the request of the employee) has:

(1) Received a credit under section 36B of the Internal Revenue Code of

1986, 26 U.S.C. 36B, or a cost-sharing reduction under the Affordable Care Act, or been determined by an Exchange to be eligible for advance payments of the premium tax credit (APTC) or for a cost-sharing reduction;

(2) Provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of title I of the Affordable Care Act (or an amendment made by title I of the Affordable Care Act);

(3) Testified or is about to testify in a proceeding concerning such violation;

(4) Assisted or participated, or is about to assist or participate, in such a proceeding; or

(5) Objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of title I of the Affordable Care Act (or amendment), or any order, rule, regulation, standard, or ban under title I of the Affordable Care Act (or amendment).

§ 1984.103 Filing of retaliation complaint.

(a) *Who may file.* An employee who believes that he or she has been retaliated against in violation of section 18C of the FLSA may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation.

(b) *Nature of filing.* No particular form of complaint is required. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language.

(c) *Place of filing.* The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov.*

(d) *Time for filing.* Within 180 days after an alleged violation of section 18C of the FLSA occurs, any employee who believes that he or she has been retaliated against in violation of that section may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, electronic communication transmittal, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law. For example, OSHA may consider the time for filing a complaint equitably tolled if a complainant mistakenly files a complaint with another agency instead of OSHA within 180 days after becoming aware of the alleged violation.

§ 1984.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, OSHA will notify the respondent of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint. Such materials will be redacted, if necessary, consistent with the Privacy Act of 1974, 5 U.S.C. 552a, *et seq.,* and other applicable confidentiality laws. OSHA will also notify the respondent of its rights under paragraphs (b) and (f) of this section and § 1984.110(e). OSHA will provide an unredacted copy of these same materials to the complainant (or complainant's legal counsel if complainant is represented by counsel) and to the appropriate office of the federal agency charged with the administration of the general provisions of the Affordable Care Act under which the complaint is filed: Either the Internal Revenue Service of the United States Department of the Treasury (IRS), the United States Department of Health and Human Services (HHS), or the Employee Benefits Security Administration of the United States Department of Labor (EBSA).

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under paragraph (a) of this section, the respondent and the complainant each may submit to OSHA a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the respondent and the complainant each may request a meeting with OSHA to present its position.

(c) During the investigation, OSHA will request that each party provide the other parties to the whistleblower complaint with a copy of submissions to OSHA that are pertinent to the whistleblower complaint. Alternatively, if a party does not provide its submissions to OSHA to the other party, OSHA will provide them to the other party (or the party's legal counsel if the party is represented by counsel) at a time permitting the other party an opportunity to respond. Before providing such materials to the other party, OSHA will redact them, if necessary, consistent with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. OSHA will also provide each party with an opportunity to respond to the other party's submissions.

(d) Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of this title.

(e)(1) A complaint will be dismissed unless the complainant has made a prima facie showing that a protected activity was a contributing factor in the adverse action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

(i) The employee engaged in a protected activity;

(ii) The respondent knew or suspected that the employee engaged in the protected activity;

(iii) The employee suffered an adverse action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the adverse action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.,* to give rise to an inference that the respondent knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the adverse action. The burden may be satisfied, for example, if the complaint shows that the adverse action took place shortly after the protected activity, or at the first opportunity available to respondent, giving rise to the inference that it was a contributing factor in the adverse action. If the required showing has not been made, the complainant (or the complainant's legal counsel, if complainant is represented by counsel) will be so notified and the investigation will not commence.

(4) Notwithstanding a finding that a complainant has made a prima facie showing, as required by this section, further investigation of the complaint will not be conducted if the respondent demonstrates by clear and convincing evidence that it would have taken the

same adverse action in the absence of the complainant's protected activity.

(5) If the respondent fails to make a timely response or fails to satisfy the burden set forth in the prior paragraph, OSHA will proceed with the investigation. The investigation will proceed whenever it is necessary or appropriate to confirm or verify the information provided by the respondent.

(f) Prior to the issuance of findings and a preliminary order as provided for in § 1984.105, if OSHA has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the respondent has violated section 18C of the FLSA and that preliminary reinstatement is warranted, OSHA will contact the respondent (or the respondent's legal counsel if respondent is represented by counsel) to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The complainant will also receive a copy of the materials that must be provided to the respondent under this paragraph. Before providing such materials to the complainant, OSHA will redact them, if necessary, consistent with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. The respondent will be given the opportunity to submit a written response, to meet with the investigator, to present statements from witnesses in support of its position, and to present legal and factual arguments. The respondent must present this evidence within 10 business days of OSHA's notification pursuant to this paragraph, or as soon afterwards as OSHA and the respondent can agree, if the interests of justice so require.

§ 1984.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of the filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the respondent has retaliated against the complainant in violation of section 18C of the FLSA.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, the Assistant Secretary will accompany the findings with a preliminary order providing relief to the complainant. The preliminary order will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The preliminary order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate period.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and, where appropriate, the preliminary order will be sent by certified mail, return receipt requested (or other means that allow OSHA to confirm receipt), to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the administrative law judge (ALJ), regardless of whether the respondent has filed objections, if respondent alleges that the complaint was frivolous or brought in bad faith. The findings, and where appropriate, the preliminary order, also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

(c) The findings and any preliminary order will be effective 30 days after receipt by the respondent (or the respondent's legal counsel if the respondent is represented by counsel), or on the compliance date set forth in the preliminary order, whichever is later, unless an objection and/or a request for hearing has been timely filed as provided at § 1984.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and the preliminary order, regardless of any objections to the findings and/or the order.

Subpart B—Litigation

§ 1984.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under section 18C of the FLSA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1984.105(b). The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings and/or the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing; if the objection is filed in person, by hand delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which will not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the order. The respondent may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order of reinstatement, which shall be granted only based on exceptional circumstances. If no timely objection is filed with respect to either the findings or the preliminary order, the findings and/or the preliminary order will become the final decision of the Secretary, not subject to judicial review.

§ 1984.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A of part 18 of this title.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the respondent object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The ALJ may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

§ 1984.108 Role of Federal agencies.

(a)(1) The complainant and the respondent will be parties in every proceeding and must be served with copies of all documents in the case. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as amicus curiae at any time at any stage of the proceeding. This right to participate includes, but is not limited to, the right to petition for review of a decision of an ALJ, including a decision approving or rejecting a settlement agreement between the complainant and the respondent.

(2) Parties must send copies of documents to OSHA and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, only upon request of OSHA, or when OSHA is participating in the proceeding, or when service on OSHA and the Associate Solicitor is otherwise required by these rules.

(b) The IRS, HHS, and EBSA, if interested in a proceeding, may participate as amicus curiae at any time in the proceeding, at those agencies' discretion. At the request of the interested federal agency, copies of all documents in a case must be sent to the federal agency, whether or not the agency is participating in the proceeding.

§ 1984.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge (ALJ) will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (d) of this section, as appropriate. A determination that a violation has occurred may be made only if the complainant has demonstrated by a preponderance of the evidence that protected activity was a contributing factor in the adverse action alleged in the complaint.

(b) If the complainant has satisfied the burden set forth in the prior paragraph, relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity.

(c) Neither OSHA's determination to dismiss a complaint without completing an investigation pursuant to § 1984.104(e) nor OSHA's determination to proceed with an investigation is subject to review by the ALJ, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant.

(d)(1) If the ALJ concludes that the respondent has violated the law, the ALJ will issue an order that will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate period.

(2) If the ALJ determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ALJ determines that a complaint was frivolous or was brought in bad faith, the ALJ may award to the respondent reasonable attorney fees, not exceeding $1,000.

(e) The decision will be served upon all parties to the proceeding, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. Any ALJ's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 14 days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board (ARB), U.S. Department of Labor. The decision of the ALJ will become the final order of the Secretary unless a petition for review is timely filed with the ARB and the ARB accepts the petition for review.

§ 1984.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the Administrative Review Board (ARB), which has been delegated the authority to act for the Secretary and issue final decisions under this part. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the ALJ will become the final order of the Secretary unless the ARB, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the ALJ will be inoperative unless and until the ARB issues an order adopting the

decision, except that any order of reinstatement will be effective while review is conducted by the ARB, unless the ARB grants a motion by the respondent to stay that order based on exceptional circumstances. The ARB will specify the terms under which any briefs are to be filed. The ARB will review the factual determinations of the ALJ under the substantial evidence standard. If no timely petition for review is filed, or the ARB denies review, the decision of the ALJ will become the final order of the Secretary. If no timely petition for review is filed, the resulting final order is not subject to judicial review.

(c) The final decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's final decision will be served upon all parties and the Chief Administrative Law Judge by mail. The final decision will also be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue a final order providing relief to the complainant. The final order will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to the complainant's former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate period.

(e) If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1984.111 Withdrawal of complaints, findings, objections, and petitions for review; settlement.

(a) At any time prior to the filing of objections to the Assistant Secretary's findings and/or preliminary order, a complainant may withdraw his or her complaint by notifying the Assistant Secretary, orally or in writing, of his or her withdrawal. The Assistant Secretary then will confirm in writing the complainant's desire to withdraw and determine whether to approve the withdrawal. The Assistant Secretary will notify the parties (and each party's legal counsel if the party is represented by counsel) of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section. A complainant may not withdraw his or her complaint after the filing of objections to the Assistant Secretary's findings and/or preliminary order.

(b) The Assistant Secretary may withdraw the findings and/or preliminary order at any time before the expiration of the 30-day objection period described in § 1984.106, provided that no objection has been filed yet, and substitute new findings and/or a new preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the Assistant Secretary's findings and/or order become final, a party may withdraw objections to the Assistant Secretary's findings and/or order by filing a written withdrawal with the ALJ. If the case is on review with the ARB, a party may withdraw a petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if OSHA, the complainant, and the respondent agree to a settlement. OSHA's approval of a settlement reached by the respondent and the complainant demonstrates OSHA's consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ, or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as appropriate.

(e) Any settlement approved by OSHA, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced in United States district court pursuant to § 1984.113.

§ 1984.112 Judicial review.

(a) Within 60 days after the issuance of a final order under §§ 1984.109 and 1984.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(b) A final order is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB or the ALJ, as the case may be, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

§ 1984.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under section 18C of the FLSA, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred or in the United States district court for the District of

Columbia. Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under section 18C of the FLSA, a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the appropriate United States district court.

§ 1984.114 District court jurisdiction of retaliation complaints.

(a) The complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy, either:

(1) Within 90 days after receiving a written determination under § 1984.105(a) provided that there has been no final decision of the Secretary; or

(2) If there has been no final decision of the Secretary within 210 days of the filing of the complaint.

(3) At the request of either party, the action shall be tried by the court with a jury.

(b) A proceeding under paragraph (a) of this section shall be governed by the same legal burdens of proof specified in § 1984.109. The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including:

(1) Reinstatement with the same seniority status that the employee would have had, but for the discharge or retaliation;

(2) The amount of back pay, with interest; and

(3) Compensation for any special damages sustained as a result of the discharge or retaliation, including litigation costs, expert witness fees, and reasonable attorney fees.

(c) Within seven days after filing a complaint in federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending on where the proceeding is pending, a copy of the file-stamped complaint. In all cases, a copy of the complaint also must be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

§ 1984.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the ALJ or the ARB on review may, upon application, after three-days notice to all parties, waive any rule or issue such orders that justice or the administration of section 18C of the FLSA requires.

[FR Doc. 2016–24559 Filed 10–12–16; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2016–0424; FRL–9953–92–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; South Dakota; Revisions to the Permitting Rules

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the State of South Dakota on October 23, 2015 and July 29, 2013 related to South Dakota's Air Pollution Control Program. The October 23, 2015 submittal revises certain definitions and dates of incorporation by reference and contains new, amended and renumbered rules. In this rulemaking, we are taking final action on all portions of the October 23, 2015 submittal, except for those portions of the submittal which do not belong in the SIP. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This final rule is effective on November 14, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2016–0424. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov,* or please contact the person identified in the ''For Further Information Contact'' section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What is the EPA approving?

The EPA is approving all revisions as submitted by the State of South Dakota on October 23, 2015, with the exception of the revisions that we are not acting on, as outlined in section III of our proposed rulemaking published on August 8, 2016 (81 FR 52388). We are taking final action to approve the following revisions: (1) *74:36:01:01 (Definitions)* - 74:36:01:01(8), 74:36:01:01(29), 74:36:01:01(67), 74:36:01:01(73), 74:36:01:05, and 74:36:01:20 ; *74:36:02 (Ambient Air Quality)*—74:36:02:02, 74:36:02:03, 74:36:02:04 and 74:36:02:05; *74:36:03 (Air Quality Episodes)*—74:36:03:01 and 74:36:03:02; *74:36:04 (Operating Permits for Minor Sources)*—74:36:04:04, 74:36:04:03 and 74:36:04:21.01; *74:36:09 (Prevention of Significant Deterioration)*— 74:36:09:02, 74:36:09:03, 74:36:09:02(7), 74:36:09:02(8) and 74:36:09:02(9); *74:36:10 (New Source Review)*—74:36:10:02, 74:36:10:03.01, 74:36:10:05, 74:36:10:07 and 74:36:10:08; *74:36:11 (Performance Testing)*—74:36:11:01; *74:36:12 (Control of Visible Emissions)*—74:36:12:01 and 74:36:12:03; *74:36:18 (Regulations for State Facilities in the Rapid City Area)*—74:36:18:10; *74:36:20 (Construction Permits for New Sources or Modifications)*—74:36:20:05; *74:36:01:01(73) (Subject to Regulation);* and the deletion of *74:36:04:03.01 (Minor Source Operating Permit Variance).*

We provided a detailed explanation of the bases for our proposal. See 81 FR 52388. We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on September 8, 2016.

In this action, we are responding to the comments we received and taking final rulemaking action on the rules from the State's July 29, 2013 and October 23, 2015, submittals.

II. Brief Discussion of Statutory and Regulatory Requirements

The changes we are taking final action to approve are consistent with the CAA and EPA regulations. Specifically:

1. CAA section 110(a)(2)(C), requires each state plan to include ''a program to provide for the . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that the National Ambient Air Quality Standards [NAAQS] are achieved, including a permit program as

required in parts C and D of this subchapter.''

2. CAA section 165, lays out the requirements for obtaining a permit that must be included in a state's SIP-approved permit program. South Dakota's Air Pollution Control Program imposes these requirements on sources, and the State's proposed plan clearly satisfies the requirements of these statutory provisions.

3. CAA section 110(a)(2)(A), requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. Chapter 6, section 13 creates enforceable obligations for sources by removing phrases such as ''the plan shall provide'' and ''the plan may provide.''

4. CAA section 110(i), (with certain limited exceptions) prohibits states from modifying SIP requirements for stationary sources except through the SIP revision process. By eliminating unspecified procedures that were referenced in the May 10, 2011 submittal, the November 6, 2015 submittal addresses this issue.

In addition, the CAA (section 110(a)(2)(C)) and 40 CFR 51.160 require states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS. Such minor New Source Review (NSR) programs are for pollutants from stationary sources that do not require prevention of significant deterioration (PSD) or nonattainment NSR permits. States may customize the requirements of the minor NSR program as long as their program meets minimum requirements.

Section 110(l) of the CAA states: ''[e]ach revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this chapter.''

The states' obligation to comply with each of the NAAQS is considered as ''any applicable requirement(s) concerning attainment.'' A demonstration is necessary to show that this SIP revision will not interfere with attainment or maintenance of the NAAQS, including those for ozone, particulate matter, carbon monoxide (CO), sulfur dioxide (SO_2), lead, nitrogen oxides (NO_X) or any other requirement of the Act. South Dakota's demonstration of noninterference (see docket), provides sufficient basis that new revisions to ARSD 74:36 will not interfere with attainment, reasonable further progress (RFP), or any other applicable requirement of the CAA. Further details can be found in our proposed rulemaking.

III. Response to Comments

We received one comment during the public comment period. This comment was not related to the EPA's proposed rulemaking for South Dakota's permitting program changes which was published on August 8, 2016. As such, we are not providing a response to this comment.

IV. Final Action

As outlined in our proposed rulemaking, the EPA finds that the addition of new, revised and removed rules to ARSD 74:36 will not interfere with attainment or maintenance of any of the NAAQS in the State of South Dakota and will not interfere with any other applicable requirement of the Act or the EPA regulations as outlined in section II of this rulemaking (see proposed rulemaking for detailed rational); and thus, are approvable under CAA section 110(l). Therefore, we are taking final action to approve South Dakota's revisions as submitted on October 23, 2015. We are not taking action on South Dakota's July 29, 2013 submittal because it was superseded.

In our final rule published in the **Federal Register** on February 16, 2016 (81 FR 7706) we inadvertently used an incorrect approval date in the updates to the South Dakota regulatory table. The EPA is taking final action to correct this error with this action. The IBR material for our February 16, 2016 action is contained within this docket.

V. Incorporation by Reference

In this rule, the EPA is taking final action to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is taking final action to incorporate by reference the Administrative Rules of South Dakota pertaining to their permitting rules as outlined in section I. The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov* and/or at the EPA Region 8 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a

tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 12, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 26, 2016.

Richard D. Buhl,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart QQ—South Dakota

■ 2. In § 52.2170, the table in paragraph (c) is amended by revising entries ''74:36:01:01'', ''74:36:01:05'', ''74:36:01:10'', ''74:36:01:20''; ''74:36:02:02'', ''74:36:02:03'', ''74:36:02:04'', ''74:36:02:05''; ''74:36:03:01'', ''74:36:03:02''; ''74:36:04:03'', ''74:36:04:04'', ''74:36:04:21''; ''74:36:09:02'', ''74:36:09:03''; ''74:36:10:02'', ''74:36:10:03.01'', ''74:36:10:05'' ''74:36:10:06'' ''74:36:10:07'' ''74:36:10:08''; ''74:36:11:01''; ''74:36:12:01'', ''74:36:12:03''; ''74:36:13:02'', ''74:36:13:03'', ''74:36:13:04'', ''74:36:13:06'', ''74:36:13:07'', ''74:36:13:08''; ''74:36:18:10''; ''74:36:20:02'', ''74:36:20:05''; ''74:36:21:02'', ''74:36:21:04'', ''74:36:21:05'', and ''74:36:21:09'' to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
*	*	*	*	*	*
74:36:01. Definitions					
74:36:01:01	Definitions	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	Except for 74:36:01:01.(73).
*	*	*	*	*	*
74:36:01:05	Applicable requirements of the Clean Air Act defined.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	*	*	*	*	*
74:36:01:10	Modification defined	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	*	*	*	*	*
74:36:01:20	Physical change in or change in the method of operation defined.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	*	*	*	*	*
74:36:02. Ambient Air Quality					
*	*	*	*	*	*
74:36:02:02	Ambient air quality standards.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:02:03	Methods of sampling and analysis.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:02:04	Ambient air monitoring network.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
74:36:02:05	Air quality monitoring requirements.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:03. Air Quality Episodes					
74:36:03:01	Air pollution emergency episode.		11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:03:02	Episode emergency contingency plan.		11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:04. Operating Permits for Minor Sources					
*	*	*	*	*	*
74:36:04:03	Emission unit exemptions	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:04:04	Standard for issuance of a minor source operating permit.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	*	*	*	*	*
74:36:04:21	Permit modifications	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	*	*	*	*	*
74:36:09. Prevention of Significant Deterioration					
*	*	*	*	*	*
74:36:09:02	Prevention of significant deterioration.		11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	Except for 74:36:09:02.(10).
74:36:09:03	Public participation		11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:10. New Source Review					
*	*	*	*	*	*
74:36:10:02	Definitions		11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:10:03.01	New source review preconstruction permit required.		11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:10:05	New source review preconstruction permit.		11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:10:06	Causing or contributing to a violation of any national ambient air quality standard.		11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:10:07	Determining credit for emission offsets.		11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:10:08	Projected actual emissions		11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	*	*	*	*	*
74:36:11. Performance Testing					
74:36:11:01	Stack performance testing or other testing methods.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	*	*	*	*	*
74:36:12. Control of Visible Emissions					
*	*	*	*	*	*
74:36:12:01	Restrictions on visible emissions.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
*	* *	*	*	* *	*
74:36:12:03	Exceptions granted to alfalfa pelletizers or dehydrators.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:13. Continuous Emission Monitoring Systems					
*	* *	*	*	* *	*
74:36:13:02	Minimum performance specifications for all continuous emission monitoring systems.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:13:03	Reporting requirements	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:13:04	Notice to department of exceedance.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	* *	*	*	* *	*
74:36:13:06	Compliance certification	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:13:07	Credible evidence	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:13:08	Compliance assurance monitoring.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	* *	*	*	* *	*
74:36:18. Regulations for State Facilities in the Rapid City Area					
*	* *	*	*	* *	*
74:36:18:10	Visible emission limit for construction and continuous operation activities.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	* *	*	*	* *	*
74:36:20. Construction Permits for New Sources or Modifications					
*	* *	*	*	* *	*
74:36:20:02	Construction permit required.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	* *	*	*	* *	*
74:36:20:05	Standard for issuance of construction permit.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	* *	*	*	* *	*
74:36:21. Regional Haze Program					
*	* *	*	*	* *	*
74:36:21:02	Definitions	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	* *	*	*	* *	*
74:36:21:04	Visibility impact analysis ...	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
74:36:21:05	BART determination	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	* *	*	*	* *	*
74:36:21:09	Monitoring, recordkeeping, and reporting.	10/13/2015	11/14/2016	[Insert **Federal Register** citation], 10/13/2016.	
*	* *	*	*	* *	*

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[FR Doc. 2016–24648 Filed 10–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2008–0486; EPA–R01–OAR–2008–0223; EPA–R01–OAR–2008–0447; EPA–R01–OAR–2009–0358; FRL–9953–85–Region 1]

Approval and Promulgation of Air Quality Implementation Plans; Maine, New Hampshire, Rhode Island, and Vermont; Interstate Transport of Air Pollution

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Maine Department of Environmental Protection (ME DEP), the New Hampshire Department of Environmental Services (NH DES), the Rhode Island Department of Environmental Management (RI DEM) and the Vermont Department of Environmental Conservation (VT DEC). These SIP revisions address provisions of the Clean Air Act that require each state to submit a SIP to address emissions that may adversely affect another state's air quality through interstate transport. The EPA has concluded that all four States have adequate provisions to prohibit in-state emissions activities from significantly contributing to the nonattainment, or interfering with the maintenance, of the 2008 ozone National Ambient Air Quality Standards (NAAQS) in any other state. The intended effect of this action is to approve the SIP revisions submitted by Maine, New Hampshire, Rhode Island, and Vermont. This action is being taken under the Clean Air Act.

DATES: This rule is effective on November 14, 2016.

ADDRESSES: EPA has established separate dockets for this action under Docket Identification No.'s EPA–R01–OAR–2008–0486 for Maine, EPA–R01–OAR–2008–0223 for New Hampshire, EPA–R01–OAR–2008–0447 for Rhode Island, and EPA–R01–OAR–2009–0358 for Vermont. All documents in the docket are listed on the *http://www.regulations.gov* Web site, although some information, such as confidential business information or other information whose disclosure is restricted by statute is not publically available. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *http://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1664; *burkhart.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background

This rulemaking approves SIP submissions from the ME DEP, the NH DES, the RI DEM, and the VT DEC. The SIP revisions were submitted on the following dates: October 26, 2015 (Maine); November 17, 2015 (New Hampshire); June 23, 2015 (Rhode Island) and November 2, 2015 (Vermont). These SIP submissions address the requirements of Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.[1]

On August 23, 2016 (81 FR 57519), EPA published a notice of proposed rulemaking (NPR) proposing approval of these four SIP submissions. The specific details of each state's SIP submission and the rationale for EPA's approval of each SIP submission are discussed in the NPR and will not be restated here.

[1] We note that while the SIP revisions submitted by Maine, New Hampshire, and Rhode Island address only the transport elements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS, Vermont's submittal addresses all of the infrastructure elements of CAA section 110(a)(2) for the 2008 ozone NAAQS. Today's action, however, only addresses the transport elements of Vermont's submittal.

II. Public Comments

EPA did not receive any comments in response to the NPR.

III. Final Action

EPA is approving the SIP revisions submitted by the states on the following dates as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS: October 26, 2015 (Maine); November 7, 2015 (New Hampshire); June 23, 2015 (Rhode Island); and November 2, 2015 (Vermont). EPA has reviewed these SIP revisions and has found that they satisfy the relevant CAA requirements.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 12, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 27, 2016.

Michael Kenyon,

Acting Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart U—Maine

■ 2. In § 52.1020, the table in paragraph (e) is amended by adding the entry ''Transport SIP for the 2008 Ozone Standard'' to the end of the table to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(e) * * *

MAINE NON REGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date [3]	Explanations
*	* *	*	* *	*
Transport SIP for the 2008 Ozone Standard.	Statewide	Submitted 10/26/2015	10/13/2016, [Insert **Federal Register** citation].	State submitted a transport SIP for the 2008 ozone standard which shows it does not significantly contribute to ozone nonattainment or maintenance in any other state. EPA approved this submittal as meeting the requirements of Clean Air Act Section 110(a)(2)(D)(i)(I).

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

Subpart EE—New Hampshire

■ 3. In § 52.1520, the table in paragraph (e) is amended by adding the entry ''Transport SIP for the 2008 Ozone Standard'' to the end of the table to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(e) * * *

NEW HAMPSHIRE NON REGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date [3]	Explanations
*	* * *	*	* *	*
Transport SIP for the 2008 Ozone Standard.	Statewide	Submitted 11/7/2015	10/13/16, [Insert **Federal Register** citation].	State submitted a transport SIP for the 2008 ozone standard which shows it does not significantly contribute to ozone nonattainment or maintenance in any other state. EPA approved this submittal as meeting the requirements of Clean Air Act Section 110(a)(2)(D)(i)(I).

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

Subpart OO—Rhode Island

■ 4. In § 52.2070, the table in paragraph (e) is amended by adding the entry ''Transport SIP for the 2008 Ozone Standard'' to the end of the table to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(e) * * *

RHODE ISLAND NON REGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
*	* * *	*	* *	*
Transport SIP for the 2008 Ozone Standard.	Statewide	Submitted 6/23/2015	10/13/2016 , [Insert **Federal Register** citation].	State submitted a transport SIP for the 2008 ozone standard which shows it does not significantly contribute to ozone nonattainment or maintenance in any other state. EPA approved this submittal as meeting the requirements of Clean Air Act Section 110(a)(2)(D)(i)(I).

Subpart UU—Vermont

■ 5. In § 52.2370, the table in paragraph (e) is amended by adding the entry ''Transport SIP for the 2008 Ozone Standard'' to the end of the table to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(e) * * *

VERMONT NON-REGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
*	* *	*	* *	*
Transport SIP for the 2008 Ozone Standard.	Statewide	Submitted 11/2/2015	10/13/2016 , [Insert **Federal Register** citation].	State submitted a transport SIP for the 2008 ozone standard which shows it does not significantly contribute to ozone nonattainment or maintenance in any other state. EPA approved this submittal as meeting the requirements of Clean Air Act Section 110(a)(2)(D)(i)(I).

[FR Doc. 2016–24491 Filed 10–12–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 384

[Docket No. FMCSA–2016–0051]

RIN 2126–AB68

Commercial Driver's License Requirements of the Moving Ahead for Progress in the 21st Century Act (MAP–21) and the Military Commercial Driver's License Act of 2012

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends its commercial driver's license (CDL) regulations to ease the transition of military personnel into civilian careers driving commercial motor vehicles (CMVs) by simplifying the process of obtaining a commercial learner's permit (CLP) or CDL. This final rule extends the period of time for applying for a skills test waiver from 90 days to 1 year after leaving a military position requiring the operation of a CMV. This final rule also allows a State to accept applications from active duty military personnel who are stationed in that State as well as administer the written and skills tests for a CLP or CDL. States that choose to accept such applications are required to transmit the test results electronically to the State of domicile of the military personnel. The State of domicile may issue the CLP or CDL on the basis of those results.

DATES: This final rule is effective December 12, 2016.

ADDRESSES: Petitions for reconsideration this final rule must be submitted in accordance with 49 CFR 389.35 to: FMCSA Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590– 0001 no later than November 14, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Selden Fritschner, CDL Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by email at *selden.fritschner@dot.gov,* or by telephone at 202–366–0677. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: This Final Rule is organized as follows:

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2016–0051 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Executive Summary

Section 32308 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) [Pub. L. 112–141, 126 Stat. 405, 794, July 6, 2012] required FMCSA to undertake a study to assess Federal and State regulatory, economic, and administrative challenges faced by current and former members of the armed forces, who operated qualifying motor vehicles during their service, in obtaining CDLs. As a result of this study, FMCSA provided a report to Congress titled ''Program to Assist Veterans to Acquire Commercial Driver's Licenses'' (November 2013) (available in the docket for this

rulemaking). The report contained six recommended actions, and two elements of the report comprise the main parts of this rulemaking. These actions are: (1) Revise 49 CFR 383.77(b)(1) governing the military skills test waiver to extend the time period to apply for a waiver from 90 days to 1 year within which service members were regularly employed in a position requiring operation of a CMV; and (2) Revise the definitions of CLP and CDL in 49 CFR 383.5 and 384.301 and related provisions governing the domicile requirement, in order to implement the statutory waiver enacted by the Military Commercial Driver's License Act of 2012 (Pub. L. 112–196, 126 Stat. 1459, Oct. 19, 2012).

This rule eases the current burdens on military personnel applying for CLPs and CDLs issued by a State Driver Licensing Agency (SDLA) in two ways. First, it extends the time in which States are allowed (but not required) by 49 CFR 383.77 to waive the skills test for certain military personnel from 90 days to 1 year. On July 8, 2014, FMCSA issued a temporary exemption under 49 CFR part 381 that extended the skills test waiver to 1 year [79 FR 38659].[1] On June 29, 2016, FMCSA extended the temporary exemption for another two years, through July 8, 2018 (81 FR 42391). This final rule makes the waiver extension permanent. Second, this rule allows States to accept applications and administer all necessary tests for a CLP or CDL from active duty service members stationed in that State who are operating in a Military Occupational Specialty as full-time CMV drivers. States that choose to exercise this option are required to transmit the application and test results electronically to the SDLA in the service member's State of domicile, which would then issue the CLP or CDL. This enables service members to complete their licensing requirements without incurring the time and expense of returning to their State of domicile. FMCSA encourages, but does not require, the State of domicile to issue the CLP or CDL on the basis of this information in accordance with otherwise applicable procedures.

FMCSA evaluated potential costs and benefits associated with this rulemaking and estimates that these changes could result in net benefits between $3.2 million and $7.7 million over 10 years, discounted at 7%.

III. Legal Basis

This rulemaking rests on the authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended, codified at 49 U.S.C. chapter 313 and implemented by 49 CFR parts 382, 383, and 384. It responds to section 5401(b) of the Fixing America's Surface Transportation Act (FAST Act) [Pub. L. 114–94, 129 Stat. 1312, 1547, December 4, 2015], which requires FMCSA to implement the recommendations included in the report submitted pursuant to section 32308 of MAP–21, discussed above. Section 5401(c) of the FAST Act also requires FMCSA to implement the Military Commercial Driver's License Act of 2012 [49 U.S.C. 31311(a)(12)(C)]. As explained later in the preamble, this rule will give military personnel all of the benefits of the Military CDL Act, while providing options.

The CMVSA provides broadly that ''[t]he Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle'' (49 U.S.C. 31305(a)). Those regulations shall ensure that ''(1) an individual issued a commercial driver's license [must] pass written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards prescribed by the Secretary under section 31305(a) of this title'' (49 U.S.C. 31308(1)). To avoid the withholding of certain Federal-aid funds, States must adopt a testing program ''consistent with the minimum standards prescribed by the Secretary of Transportation under section 31305(a) of this title'' (49 U.S.C. 31311(a)(1)).

Potential CMV drivers often obtain CDL training outside their State of domicile. Driver training schools typically provide their students with a ''representative'' vehicle to use for the required skills test (see 49 U.S.C. 31305(a)(2)), as well as a CDL holder to accompany the applicant to the test site. Until 2012, however, the CMVSA provided that a CDL could be issued only by the driver's State of domicile (49 U.S.C. 31311(a)(12)(A)). The cost to applicants trained out-of-State of traveling to their State of domicile to be skills tested can be substantial in terms of both personal time and financial expense. Therefore, on the basis of the authority cited in the previous paragraph, FMCSA's final rule on ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' (76 FR 26854, May 9, 2011) required States where a driver is domiciled to accept the result of skills tests administered by a different State where the driver completed training (49 CFR 383.79).

Legal residence or ''domicile'' is the State that individuals consider their permanent home, where they pay taxes, vote, and get a driver's license. Military personnel are frequently stationed outside their State of domicile. The Military CDL Act allows a State to issue CDLs to certain military personnel not domiciled in the State, if their temporary or permanent duty stations are located in that State (49 U.S.C. 31312(a)(12)(C)). However, this procedure creates problems for service members trying to maintain legal domicile in another State. Because drivers' licenses are often treated as proof of domicile, obtaining a CDL from the State where they are stationed could result in the loss of domicile and corresponding benefits (*e.g.,* tax breaks) in what they consider their ''home'' State.

This final rule therefore utilizes the CMVSA's broader authority to allow the State where military personnel are stationed to accept CLP or CDL applications and to administer written and skills tests for the CDL. The rule requires a State that utilizes this procedure to transmit the application and test results electronically to the State of domicile, which is permitted, but is not required, to issue the CLP or CDL. This maintains the link between the issuing State and the driver's State of domicile that was mandated by the CMVSA [49 U.S.C. 31311(a)(12)] until the Military CDL Act authorized an exception (with problematical implications) for military personnel.

Section 5401(a) of the FAST Act added to 49 U.S.C. 31305 a new paragraph (d), which requires FMCSA to (1) exempt certain ex-military personnel from the CDL skills test if they had military experience driving heavy military vehicles; (2) extend the skills test waiver to one year; and (3) credit the CMV training military drivers receive in the armed forces toward applicable CDL training and knowledge requirements. This rule addresses the first and second of these requirements in considerable detail; the third, however, will require subsequent rulemaking.

Section 5302 of the FAST Act requires FMCSA to give priority to statutorily required rules before beginning other rulemakings, unless it determines that there is a significant need for the other rulemaking and so notifies Congress. This rule is required by the provisions of section 5401. Even in the absence of those mandates, however, FMCSA believes the need to improve employment opportunities for military personnel returning to civilian life justifies the publication of this rule.

[1] Available in the docket for this rulemaking.

IV. Background

States are allowed to waive the skills test for current or former military personnel who meet certain conditions and are or were regularly employed in the preceding 90 days in a military position requiring the operation of a CMV (49 CFR 383.77(b)(1)). Between May 2011 and February 2015, more than 10,100 separated military personnel took advantage of the skills test waiver. In the November 2013 Report to Congress titled, ''Program to Assist Veterans to Acquire Commercial Driver's Licenses,'' FMCSA concluded that lengthening that 90-day period would ease the transition of service members and veterans [2] to civilian life with no impact to safety. FMCSA recommended an extension of the period of availability to 1 year.

The Virginia Department of Motor Vehicles (DMV) subsequently requested an exemption from § 383.77(b)(1) to allow a 1-year waiver period for military personnel (available in docket FMCSA–2014–0096). On April 7, 2014, FMCSA published a **Federal Register** notice announcing the request (79 FR 19170). Five comments were received; all supported the application, agreeing that extending the waiver period to 1 year would enable more military personnel to obtain CDLs. In addition, the New York Department of Motor Vehicles (DMV) suggested ''broader application of this exemption to all jurisdictions.'' The American Association of Motor Vehicle Administrators (AAMVA), which represents State and Provincial officials in the United States and Canada who administer and enforce motor vehicle laws, also requested that FMCSA consider a blanket exemption for all U.S. jurisdictions.

FMCSA determined that the exemption requested by the Virginia DMV would maintain a level of safety equivalent to, or greater than, the level that would be achieved without the exemption, as required by 49 CFR 381.305(a). The Agency, therefore, approved the exemption and made it available to all SDLAs (79 FR 38645, July 8, 2014). That nationwide exemption was extended for an additional 2 years by a notice published June 29, 2016 (81 FR 42391). However, neither exemption changed the language of § 383.77(b)(1) and the current exemption remains effective only until July 8, 2018.

[2] Veteran: A person who served on active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard and who was discharged or released therefrom under conditions other than dishonorable.

V. Proposed Rule

On March 16, 2016, FMCSA published a notice of proposed rulemaking (NPRM) titled ''Commercial Driver's License Requirements of the Moving Ahead for Progress in the 21st Century Act and the Military Commercial Driver's License Act of 2012'' (81 FR 14052). The proposed changes in 49 CFR parts 383 and 384 were intended to ease the process of getting a CLP or CDL for both active duty and recently separated military personnel.

VI. Discussion of Comments and Responses

General Comments on the Rule

The NPRM elicited 16 comments, the majority from SDLAs. Several SDLAs and individuals suggested changes to the proposal, but no commenters opposed the rule.

A. Section 383.5: New Definition of ''Military Services''

Issue: The NPRM proposed adding a definition in § 383.5 of ''military services'' to the list of definitions in that section. A definition for ''military services'' is needed in order to interpret the new requirements in part 383 in this rulemaking.

Comments: The Virginia DMV requested guidance on the meaning of the term ''auxiliary units,'' and suggested mirroring United States Code language.

FMCSA Response: FMCSA has removed the reference to ''auxiliary units.'' It was used to cover the Coast Guard Auxiliary, but should not have been included because the Auxiliary is a non-military organization [see 14 U.S.C. 821(a)] and its members are civilians. The definition of ''military services'' proposed in the NPRM follows the relevant definitions in the Armed Forces title of the United States Code (10 U.S.C. 101). Those definitions do not use the term ''auxiliary units.''

B. Section 383.77: Allowing States To Extend Their Waiver of the Skills Test for Separated Military Personnel From 90 Days to 1 Year

Issue: The NPRM would have amended § 383.77(b)(1) to allow States to accept skills test waiver applications from military personnel for up to 1 year after they were regularly employed in a military position requiring operation of a CMV.

Comments: The Virginia DMV and AAMVA reaffirmed their support for the proposal. The American Bus Association (ABA) stated that the proposal would ''ease the administrative burden on state licensing agencies in no longer having to periodically apply for these extensions, but it would have a practical benefit to transitioning military CMV drivers looking for a new civilian CMV driving career.'' The New York DMV favored the extension because it would alleviate some of the problems identified by FMCSA in its 2013 Report to Congress. The Montana Department of Justice, Motor Vehicle Division (DOJ/MVD), supported codifying the regulatory exemption. The Minnesota Department of Public Safety, Driver and Vehicles (DPS/DV), favored the extension, as it mirrors Minnesota law. The Michigan Department of State (DOS), the Arizona Department of Transportation (DOT), and the American Trucking Associations (ATA) supported the proposal.

One individual commenter agreed with the concept but suggested an eight month timeframe instead of one year.

FMCSA Response: FMCSA adopts the proposal as drafted. FMCSA will extend the 90-day skills test waiver period to 1 year from the date the driver was last employed in a military position regularly requiring the operation of a CMV. This does not otherwise change the eligibility criteria for the exemption.

Training for Military Drivers, How the Entry-Level Driver Training Rule Would Affect These Drivers (§ 383.77)

Issue: Section 383.77 implies that a military or ex-military applicant would need a certain level of experience, but the proposal did not mandate any training.

Comments: One individual commenter stated that, although she supported the rulemaking and easing the transition for returning veterans, CDL schools have a value. She stated that many veterans currently use the GI Bill to attend a CDL school. She also stated that the CDL curriculum is only 20 days.

The New York DMV asked if proof of CMV driving would replace the Entry-Level Driver Training requirements, and if it could, how much would be required.

ATA favored allowing non-military drivers, in addition to military personnel, to take the written and skills tests outside their State of domicile, and requested that FMCSA issue a supplemental NPRM on that subject.

FMCSA Response: FMCSA agrees that driver training is important, and recently published an NPRM that would require training for entry-level drivers (81 FR 11944, March 7, 2016). Under that proposal, entry-level driver training would not be required for ''Veterans with military CMV experience who

meet all the requirements and conditions of § 383.77 of this chapter'' (49 CFR 380.603(a)(3)). Today's final rule extends the waiver period allowed by § 383.77, but does not address substantive training issues. Giving non-military drivers the same testing flexibility granted to military personnel is beyond the scope of this rule, and FMCSA declines to consider the ATA request at this time.

C. Section 383.79: Allow the State Where the Person Is Stationed and the State of Domicile To Coordinate CLP and CDL Testing and CDL Issuance

The NPRM would have allowed a State where active-duty military personnel are stationed to accept applications and administer CLP knowledge and CDL skills tests. That State would then have been required to transmit the application and test results to the driver's State of domicile, which would have been required to accept these documents and issue the CLP or CDL.

Procedural Differences Among States Issuing CLPs and CDLs (§ 383.79): Licensing Variations

Issue: The proposal did not account for licensing variations among the States, relying on the 2011 CDL rulemaking that standardized the elements of a license.

Comments: Several commenters pointed out that States have different procedures for issuing CLPs and CDLs. AAMVA requested a list of data elements that needed to be transferred, as many States have variations. The Missouri Department of Revenue (DOR) asked which SDLA (the State where the driver is stationed or the State of domicile) would handle the verification processes. The California DMV asked how to convert a CLP to a CDL under §§ 383.25 and 383.153, and did not address a non-domiciled variation. ATA supported allowing jurisdictions to test on behalf of each other, and stated that the knowledge and skills test should be standardized, per FMCSA's statements in the NPRM. Because of the standardization, ATA did not believe there would be any change or reduction in safety, and pointed out that costs for service members who want to obtain a CLP or CDL would likely decrease.

FMCSA Response: The 2011 CLP/CDL rule (89 FR 26853) required States to adopt new minimum Federal standards for the CDL knowledge and skills tests and established new minimum procedures for States to issue the CLP. FMCSA has confirmed that all States meet those minimum standards. In addition, some States have adopted more stringent standards. While that is allowed by part 383, it does create variations among States.

As proposed in the NPRM, the State of domicile will issue the CLP or CDL; this has always been a fundamental principle of the program. However, in response to comments, the NPRM requirement that the State of domicile must accept and act on information transmitted by the State where the driver is stationed has been removed. The final rule is entirely permissive. In other words, the State where the military driver is stationed may (but is not required to) administer the written and skills tests for the CLP and CDL—as proposed in the NPRM—and the State of domicile may (but is not required to) accept the testing information and documentation provided by the State where the driver is stationed and issue the CLP or CDL on that basis. This permissive approach will require coordination between two States, and among many pairs of States. At a minimum, the State where the driver is stationed will have to use administrative procedures, forms, etc., that are acceptable to the State of domicile, since that State would ultimately issue (or refuse to issue) the CLP or CDL. The Agency recognizes that States will have to harmonize different practices. If two SDLAs find that their licensing standards are incompatible, they will not reach agreement and military drivers will not be able to use the application and testing alternatives allowed by this rule. However, we are confident that most States will work out their mutual differences in order to help military personnel transition to civilian careers in the motor carrier industry.

This final rule does not change the requirements for converting a CLP to a CDL. If eligible military CLP holders want to apply for a CDL, they could do so where they are stationed (assuming that State uses the option granted by this rule), but the CDL itself must still be issued by the State of domicile.

Participating States have a 3 year period to adopt the framework of the rule. FMCSA, AAMVA, and the States will work together to reach agreement to implement the procedures after this time.

Procedural Differences Among States Issuing CLPs and CDLs (§ 383.79): Fees

Issue: The proposal was silent on the topic of fees charged by SDLAs for services rendered under proposed § 383.79.

Comments: The New York DMV asked how the State of domicile will collect fees if the process is entirely electronic. The Oregon DMV voiced concern that drivers might be forced to pay both the State where the driver's application is filed and processed and the State of domicile, and stated that it was required by statute to collect fees before issuing CLPs and CDLs. The Michigan DOS asked for clarify concerning fees, and said there was an assumption of shared cost between the State of domicile and State of station. North Dakota stated that its fee has to be paid in person. The Minnesota DPS/DV wanted the issue of fees to be addressed explicitly. The California DMV stated that fees were not addressed in the proposal.

FMCSA Response: Driver licensing fees are left to the discretion of the States, and FMCSA believes that States are best equipped to determine such fees. Some SDLAs currently waive fees for active-duty military personnel and may well continue to do so while utilizing this rule. On the other hand, it is possible that both States involved in the new testing and licensing procedures allowed by this rule may charge for their services. Even in that worst-case scenario, however, the driver is likely to find the new procedures cheaper than returning to his/her State of domicile to complete the necessary applications and tests. In cases where one State has to transmit all or part of a fee to another State, FMCSA is confident that current financial systems will be able to provide solutions. The reciprocal transfers among States required by the International Registration Plan and the International Fuel Tax Agreement suggest that options may be readily available.

As discussed below in connection with Executive Order 12866, military drivers will retain the options: (1) To return to their State of domicile to apply for a CLP or CDL; and (2) to change their State of domicile to the State where they are stationed. If the distance between two States is small enough, and cost of returning to the State of domicile is cheaper than the fees charged, then the military driver may wish to apply for the CLP or CDL in person in the State of domicile. This rulemaking does not alter that ability.

FMCSA believes the rule offers significant flexibility that will reduce the cost to most military drivers of obtaining a CDL. Nonetheless, each driver will have to balance application fees versus travel costs, and the advantages of maintaining and switching State of domicile.

Procedural Inconsistences Among States Issuing CLPs and CDLs (§ 383.79): Forms and Applications

Issue: The NPRM was silent on which State (State of domicile or State of

station) would supply the application for a CLP or a CDL.

Comments: Several SDLAs had concerns about issuing or processing CLPs and CDLs on behalf of another State. Several mentioned that different States require different information.

The Arizona DOT said that it could not enforce another State's standard. The Oregon DMV stated that CLP and CDL applications are not uniform, and neither are the skills and knowledge tests. The Oregon DMV is prohibited by statute from using another State's application to issue an Oregon license. Oregon also stated that any expectation of enforcing another State's applications and forms is unreasonable. The New York DMV stated that the applications are too varied, and requested guidelines to ensure each State receives the data it needs. The Arizona DOT argued that requiring States to handle other States' applications infringes upon State laws, and it is not realistic for personnel to handle forms from other SDLAs, as they would require different information. Arizona also noted that States might require legislative changes in order to implement the regulatory revisions adopted here. Minnesota DPS/DV pointed out that each SDLA has a different form; Minnesota does not use an electronic form. The Michigan DOS and Virginia DMV suggested national forms and applications as possible solutions for consistency. The Michigan DOS also asked how the State where the driver is stationed would verify a credential in the State of domicile. Virginia requested AAMVA's involvement in developing a national application, if one were to be developed. AAMVA asked for clarification about which elements needed standardization.

The Nebraska DMV requested clarification of what parts of the application would be mandatory for transmission. North Dakota said that the process in the NPRM did not provide enough information for a State of station to adequately maintain records and process records for the State of domicile. North Dakota said that its own application must be used.

FMCSA Response: The Agency agrees that clarification would be needed if FMCSA were adopting forms, applications, and procedures. However, FMCSA is not adopting national forms that States must use when implementing this final rule. The outlines of a national standard are already specified in considerable detail in §§ 383.25 *Commercial learner's permit (CLP)* and 383.71 *Driver application and certification procedures*. As indicated above, the Agency is allowing any two States involved in the issuance of a CLP or CDL to military personnel stationed outside their State of domicile to work out between themselves any remaining differences in their respective procedures and requirements. The most obvious solution would be for the State where the driver is stationed to use the forms and follow the procedures required by the State of domicile. FMCSA will work with the SDLAs and AAMVA during the implementation period to assist in determining common data points that meet the needs of the States that wish to participate.

Some States may decide not to process or accept CLP and/or CDL applications transmitted by another State. The rule does not require any State to enforce another State's standard. The State of station will collect applications on behalf of the State of domicile. It will be the applicant's responsibility to ensure both that the State where he/she is stationed will entertain an application and that his/her State of domicile will accept and process the application and test results provided by the former and issue a CLP or CDL.

Again, the final rule is entirely permissive. Each pair of States potentially involved in the licensing procedures allowed by this rule can opt out if the involved States are unable to reach agreement. The Agency believes that many States will find ways to harmonize their forms, procedures, and other requirements—but we recognize that some States will not be able to do so. FMCSA has expanded the description of the requirements in today's final rule, including making it clear that States have the option—but are not required—to process applications and test results on behalf of other States and to accept those applications and test results collected by other States.

Procedural Differences Among States Issuing CLPs and CDLs (§ 383.79): License Used for Non-Driving Purposes

Issue: The NPRM was silent on the topic of licenses being used for purposes other than driving.

Comments: The Montana DOJ/MVD asked how this proposed rule would impact voting. The New York DMV asked if there would be an impact on drivers who no longer have current addresses within the State of domicile. The Oregon DMV stated that each SDLA has its own standards for domicile, and it will be impossible for another State's SDLA to verify them.

FMCSA Response: The Agency notes the concerns about voting rights, as well as the domicile status and addresses of applicants, but believes that most States will be able to resolve such questions in cooperation with other States. Drivers who obtain a CLP or CDL through this process will retain their State of domicile, and will therefore never be entered into the pool of voters in the State where they are stationed, or need to update their addresses. From the perspective of the SDLA in the driver's State of domicile, nothing has changed.

Procedural Differences Among States Issuing CLPs and CDLs (§ 383.79): In-Person Requirements

Issue: FMCSA did not address photo or other in-person licensing requirements.

Comments: Several SDLAs pointed to inconsistencies in procedures between States for parts of the license that must be done in person, such as facial recognition and signature.

AAMVA asked for clarification on which jurisdiction would be responsible for the photography element; it also mentioned the REAL ID Act provision that requires digital pictures on a driver's license, as well as tracking of denied REAL ID applications. AAMVA said that all SDLAs are not following the REAL ID requirements, and that if the driver's picture is taken in the State where he/she is stationed, this could have an additional cost. When a license is issued, the Oregon DMV takes a photograph which is digitized and compared to a database with facial recognition software. The New York DMV mentioned other in-person requirements in addition to a photograph, including a Social Security Number and other State-specific identity confirmation.

The Virginia DMV stated its concern about a driver using the new provisions of § 383.79 if he or she did not have an existing license; Virginia mentioned that this might be a concern for issuing a photograph of the driver on the license. The Montana DOJ/MVD mentioned that the initial issuance of a license can only take place in person; an in-person signature may also be required from those drivers who are domiciled in Montana, but have not provided a digital signature recently, and this would require a data base modification.

North Dakota stated that many of its requirements, like digital photo processing, eye exams, and fees, must be done in person; not allowing the State of domicile to insist on these requirements is ''unacceptable.'' The Michigan DOS mentioned that facial recognition, fingerprinting, and retinal scanning often occur in the State of domicile when a new CLP or CDL is

issued. The California DMV asked whether a State that requires facial recognition would process a CLP or CDL application without the applicant appearing in person. The Arizona DOT listed a number of in-person-only requirements. These included facial recognition, original documents for citizenship verification, and digital signatures.

FMCSA Response: As explained above, this final rule is permissive, not mandatory. If a State of domicile concludes that another SDLA cannot properly administer its processing procedures, it can decline to issue CLPs/CDLs to military personnel stationed in that State. And a State that knows its processing standards are inconsistent with those of another State can decline even to accept CLP/CDL applications from military personnel domiciled in that State.

It is worth noting, however, that there is no Federal requirement on where a photograph is taken. That factor alone should not impede a State of domicile from accepting a CLP/CDL application from a State where a military driver is stationed.

FMCSA disagrees with the Virginia DMV's comment concerning drivers who do not have existing licenses; only drivers who have an existing license are eligible for relief under § 383.79. As for Montana's comment, today's final rule applies only to a driver with an existing license from his/her State of domicile. An initial license would never be issued by the State where the individual is stationed.

Other in-person procedures would be left to the discretion of the two SDLAs; they could determine whether it would be possible to meet criteria for facial recognition, digital signatures, REAL ID Act requirements, and other processes normally done in-person. The Agency declines to add these provisions to a final rule, as it believes that the best practices will be implemented at the State level. If our assistance is sought, FMCSA will work with AAMVA to create best practices.

Procedural Differences Among States Issuing CLPs and CDLs (§ 383.79): Verification of Military Station or Military Status

Issue: The proposed rule did not address how to verify the military station or status of applicants.

Comments: AAMVA pointed out that proof of State of station should be provided, and asked FMCSA to issue guidance on this topic. The New York DMV and the Nebraska DMV asked for clarification on how to prove the State of station.

FMCSA Response: The applicant must provide proof of his or her active duty status in the form of a valid active duty military identification card. In addition, the applicant must show the driver licensing agency either a copy of his or her current orders or a current Military Leave and Earning Statement (Jan 2002) to prove where he or she is stationed.

Procedural Differences Among States Issuing CLPs and CDLs (§ 383.79): Credentialing, License Issuance

Issue: Due to the issuance of the 2011 CDL and CLP rule referenced previously, FMCSA believed that all States met the same minimum standard when issuing CLPs and CDLs.

Comments: Several SDLAs mentioned credentialing concerns. The California DMV asked how to destroy another State's license in accordance with § 383.73(c)(6). AAMVA stated that it was concerned there was no mechanism to issue a new CLP or CDL. AAMVA stated that some SDLAs mail licenses to the applicants, but there is no standardized process. AAMVA also expressed concerns about multiple-document retention, and gave an example where an applicant ended up with several licenses at the same time; AAMVA said that the rule should address the surrendering of licenses. The Minnesota DPS/DV wanted a clear explanation of which State should destroy the old credentials. The Arizona DOT pointed to § 384.211 and stated that it requires the destruction of old credentials before the issuance of new credentials; that process would leave drivers not present in that State without a license in the interim.

ATA stated that if there was a lag time in issuing new credentials, the driver should be given an alternate document (coordinated by the two States involved) for proof of licensure during that time. ATA suggested allowing the State where the driver is stationed to issue CLPs and CDLs on behalf of the State of domicile.

FMCSA Response: The application and testing procedures allowed by this rule are available only to military drivers who already have a non-CDL license from their State of domicile. That State is responsible for issuing the new CLP or CDL. Although this rule leaves the repossession of the previous license (usually a standard automobile license) to the discretion of the States involved, there would seem to be two basic alternatives. Either the State of domicile would send the CDL document to the State where the driver is stationed, which in turn would demand and destroy the previous license when it delivered the CDL to the driver; or the State of domicile would require the driver to mail his/her previous license to that SDLA, which would destroy it and then mail the CDL back to the driver. The second procedure would leave the driver without a driver's license for a few days. FMCSA believes that participating States will be able to utilize these or other agreed-upon procedures without incurring any serious risk that a driver could hold multiple driving credentials or would be without any credentials for an interim period.

Procedural Differences Among States Issuing CLPs and CDLs (§ 383.79): Citizenship

Issue: The proposed rule did not address citizenship.

Comments: The Montana DOJ/MVD and the New York DMV asked which State would verify citizenship or lawful permanent residency, since not all holders of automobile licenses will be United States citizens. New York asked how a processing State would send citizenship information to a domicile State, if that was the procedure chosen. New York DMV pointed out that checking this information is required under §§ 383.71 and 383.73. The Virginia DMV asked for clarification of ''legal presence'' as well. Referring to § 383.71, the Arizona DOT said that its policy was to require original documents to verify citizenship, and that this could not be done through the mail.

FMCSA Response: Proof of citizenship or lawful permanent residency will necessarily be included in the application process. Ultimately, the responsibility for verifying the driver's status rests with the State of domicile, since it will issue the CLP or CDL, but the State where the applicant is stationed can verify these matters on behalf of the State of domicile. The two States involved will have to work out the necessary administrative steps between themselves. It must be noted that § 383.71(a)(2)(v) and § 383.73(a)(2)(vi) both require proof of citizenship or lawful permanent residency. This rule does not change either of these requirements, and the CLP/CDL remains available only to citizens and lawful permanent residents.

Electronic Transfer of the Skills Test (§ 383.79): Mandatory Use of Systems

Issue: The results of the completed knowledge and skills test would be transmitted the same way the skills test scores are transmitted today for out of state testers—electronically. Only passing results would be transmitted.

Comments: Several SDLAs voiced concern about variances in data between States and asked the Agency to identify the system to be used for data transfer. The California DMV mentioned that the system used would have to protect personally identifiable information (PII), and should have standardized data elements. AAMVA stated that the systems developed to transmit skills test results pursuant to the 2011 CLP/CDL rule would have to be modified to accommodate the knowledge test results and the application itself. The New York DMV echoed this point and asked what format would be used to transfer applications and test results, as the current systems do not do this. The Virginia DMV stated that transmittal must be done electronically for security, and requested the enhancement and explicit requirement for use of the Commercial Skills Test Information Management System (CSTIMS) and the Report Out-Of-State Test Results (ROOSTR) system. The Nebraska DMV also requested an explicit CSTIMS and ROOSTR transmission requirement.

The Montana DOJ/MVD stated that current information transmission systems were inadequate and that there would be technical, procedural, and legal issues. It referred to several AAMVA-run systems, and stated that digital image access would need to be added, as would a method of transferring knowledge test scores. The Missouri DOR mentioned that it did not use REAL ID, or any of the AAMVA systems. ABA supports the use of data systems to speed up the licensing process, but has concerns about the systems' infrastructure.

FMCSA Response: FMCSA will not require the use of any specific system for transferring licensing information between States. However, the AAMVA-maintained CSTIMS and ROOSTR systems could be appropriate methods of electronic transfer. FMCSA agrees with the need to protect PII, but does not establish any new procedures for doing so. In any case, no Federal records are created by this rule. The information transferred by the State where the military driver is stationed to his or her State of domicile will be entered into the Commercial Driver's License Information System (CDLIS). That system, however, involves records created and maintained by the States. This rule does not result in a new or revised Privacy Act System of Records for FMCSA.

Electronic Transfer of the Skills Test (§ 383.79): Cost of Systems

Issue: The NPRM concluded that there would be a cost for using AAMVA-run systems, but that the cost would be included in the existing arrangements for States to maintain and use these systems.

Comments: Both the Missouri DOR and AAMVA stated that using AAMVA systems to transfer skills tests electronically would involve a cost. AAMVA also mentioned that the CLP/CDL application and the electronic-transfer requirement would have a cost as well. The Missouri DOR stated that several SDLAs have opted not to use an electronic system; reversing that policy would generate costs, including training for the system. The Montana DOJ/MVD mentioned that the cost to upgrade the systems would be substantial.

FMCSA Response: Today's final rule requires electronic transfer of test results, but does not specify the methods of that transfer. There is no requirement to procure and use a data system not already in place. States are currently required to transmit the results of skills test electronically, and FMCSA assumes that the States will use the same method of transfer for the knowledge test results. Forty-seven SDLAs use the AAMVA-owned and -operated CSTIMs and/or ROOSTR systems to transfer skills test results. FMCSA anticipates that AAMVA will update these systems to allow for transmission of knowledge test results during a routine IT upgrade cycle, with minimal additional cost. In the regulatory analyses section below, FMCSA estimates that drivers affected by this rule will pay a processing fee to their State of station that will cover the costs of information transfer between the State of station and the State of domicile.

Electronic Transfer of the Skills Test (§ 383.79): Fraud

Issue: FMCSA did not discuss fraud in the NPRM, as the proposal relied upon existing systems that have built-in protection against fraud.

Comments: Several SDLAs thought that the proposal did not adequately address concerns over fraud. Oregon took issue with the fact that it would have to rely upon other SDLAs to verify information. The Montana DOJ/MVD thought the NPRM downplayed the risk of fraud, especially due to the photography and documentation requirements, and argued that the rule would need fine-tuning.

FMCSA Response: FMCSA believes that States will take appropriate steps to protect against attempted fraud by applicants. FMCSA takes fraudulent behaviors seriously, has conducted yearly audits of all States for the past three years, and will continue to be vigilant in this regard.

Electronic Transfer of the Skills Test (§ 383.79): Other Forms

Issue: The proposal did not address the transfer of additional certifications between States.

Comments: The New York DMV asked how the processing State would collect a driver's medical certification and self-certification and submit it to the State of domicile.

FMCSA Response: FMCSA expects SDLAs to coordinate the transfer of certifications, presumably in the same way that they transfer the CLP/CDL applications and test results.

D. Legal Concerns

Issues: The Oregon DMV suggested that the proposal overstepped the requirements of the Military CDL Act, which should be followed instead. Oregon felt that the NPRM was unnecessarily complex and should more closely track with the statutory language.

The New York DMV believes that the proposal contradicted the recent CDL rulemaking, and undermined the work States have done to meet its requirements.

The Minnesota DPS/DV raised a concern that the requirement to accept applications on behalf of other States violated State laws. The Montana DOJ/MVD referenced a Montana State law that requires ''verification through the Federal Systematic Alien Verification for Entitlements program (SAVE).''

FMCSA Response: The Military CDL Act of 2012 does indeed allow States to issue CDLs to military personnel who are stationed, but not domiciled, there. As discussed in this rule, however, obtaining a CDL where he or she is stationed may void the driver's domicile in his/her ''home'' State and with it certain benefits, *e.g.,* lower taxes, in-State tuition, etc. The Agency determined in the 2011 final rule that the general CDL statute—the Commercial Motor Vehicle Safety Act of 1986, as amended—is sufficiently broad to authorize a rule requiring States to accept the results of skills tests administered outside the driver's State of domicile. The NPRM in this rulemaking expanded that analysis and conclusion to require States of domicile to accept the results of CDL written and skills tests administered to military personnel by States where these personnel are stationed but not domiciled. That approach allowed the State of domicile to issue the CLP and CDL, thus eliminating any inadvertent transfer of domicile that might occur if

a military driver received a CDL from the State where he/she was stationed. However, in view of the comments submitted to the docket, the Agency has decided—as described above—not to *require* the State of domicile to accept the test results recorded by another State, but rather to *allow* the State of domicile to do so. With this change, the argument that the NPRM requires the violation of certain State laws simply disappears. The success of this final rule will depend on the willingness and ability of the State of domicile and the State where the driver is stationed to work out mutual differences in their forms, procedures, and other requirements. We are confident that most States will manage that task effectively. This final rule provides relief for a very limited population of military service members who want to become commercial drivers. Additionally, the rule relies heavily on the standardization of licensing and other requirements put into place by the 2011 CDL rule.

E. Other

Alternative Processes Suggested

Issue: FMCSA did not suggest any regulatory alternatives to this proposal.

Comments: The New York DMV suggested an FMCSA-Department of Defense (DOD) partnership using an AAMVA CDL test model, or allowing transfer of current, non-CDL licenses to their State of station as a non-domiciled driver. The second alternative process suggested would allow military drivers to transfer domicile to any State after leaving the service. New York thought that these would provide sufficient relief as well as not impose additional burdens on the SDLAs.

FMCSA Response: New York's suggestions are beyond the scope of the NPRM. The Agency believes the relief provided by this final rule will be substantial. FMCSA, AAMVA, and the States will work together to reach agreement to implement the procedures during the implementation period.

Military Occupational Codes Eligible

Issue: The executive summary in the NPRM included the following proposal: ''Revise 49 CFR 383.77(b)(3) to add the option to qualify for a CDL based on training and experience in an MOC [Military Occupational Specialty] dedicated to military CMV operation.'' However, this proposal was not in the regulatory language or discussed at any level in the preamble. Additionally, the MOC was incorrectly referenced in proposed § 383.79.

Comments: ABA requested either guidance or a list of which MOCs would be able to take advantage of relief from the regulation, referring to a proposal in § 383.77(b)(3).

The Virginia DMV asked for clarification on how to confirm the MOC of the applicants under § 383.79. The New York DMV also asked why proof of a military CMV status would be necessary for the provisions of § 383.79. The Michigan DOS/MVD stated that if military testing meets or exceeds CDL requirements, a CDL should be issued without testing. The California DMV understood the § 383.79 proposal to include a requirement that drivers wishing to seek a CDL in their State of domicile via a State where they are stationed would need to be operating in a CMV-driving MOC, and asked for clarification of which MOCs would be included.

FMCSA Response: The § 383.77(b)(3) proposal was inadvertently left in the executive summary for the NPRM; it was not intended to be a part of this rulemaking, was not in the proposed regulatory language, and is not included in today's final rule. FMCSA will consider this as a potential topic for a future rulemaking.

The provisions under § 383.79 pertain to anyone in the military; they do not waive any of the requirements for obtaining a CLP or CDL. This section simply allows drivers to seek CDLs in the State of station rather than the State of domicile.

Procedural Concerns

Comments: The ATA requested an extension of the proposal in § 383.79 to non-military personnel as well, and requested that CDL schools outside the State of licensure be allowed to teach drivers.

The Nebraska DMV asked several questions about service members who pass the knowledge test in their States of station returning to their State of domicile, and about passing the knowledge tests in other States. AAMVA asked a similar question, about applicants who begin the testing process in one State and then are transferred to another State.

FMCSA Response: FMCSA declines ATA's request for a Supplemental NPRM. The comments to this rulemaking docket identified challenges to out-of-State testing which persuaded the Agency to adopt a more modest, permissive approach. ATA's request would significantly exacerbate the difficulties outlined by State commenters. Training schools routinely enroll students from other States, but allowing large numbers of civilian students to be knowledge-tested outside their State of domicile is well beyond the scope of this rulemaking. Military drivers are a special class being accommodated in this rule because of the Military CDL Act of 2012, which was intended to ease their transition to civilian life.

The rulemaking did not discuss the knowledge test requirements. FMCSA's intent was to make the licensing process easier for service members. Ultimately, however, the SDLAs control their own processes. While it is possible, though not likely, that a service member may be transferred from one duty station to another between the time he/she applies for the CLP and wants to take the skills test, the national uniformity of skills test procedures should make no difference to the acceptability of the results to the State of domicile.

VII. Changes From the NRPM

Section 383.5. Definitions. A new definition of ''military service member'' was added, along with a revised definition of ''military services,'' where the phrase ''auxiliary units'' was removed.

Section 383.77 Substitute for driving skills tests for drivers with military CMV experience, is adopted as proposed in the NPRM.

Section 383.79 Skills testing of out-of-State students; Knowledge and skills testing of military personnel. The title of this section has been revised to differentiate the two concepts addressed within it. The discussion of electronic transmission of documents has been somewhat expanded.

Section 384.301 Substantial compliance general requirements. This section is adopted as proposed.

VIII. Today's Final Rule

Section 383.77: Extension of the Skills Test Waiver

Eligible Military Personnel. The first part of the rule addresses military personnel recently separated from active duty. These veterans must have been operating in a position where they regularly drove a military CMV.

Current Procedures. Currently, the standard at § 383.77 authorizes States to allow these drivers up to 90 days following separation from a military position requiring operation of a CMV to apply to waive the skills test. In 2015 the Agency granted relief through an exemption that allowed a 1-year waiver period, without changing the regulation.

Changes today. Today's regulation would codify that extension, meaning that States would be authorized to accept applications for a skills test

waiver for up to 1 year rather than 90 days.

Requirements for States. All States currently waive the skills test for this population of applicants; this rule changes neither the eligible population nor State procedures. Only the duration of the allowable waiver period is changed.

Section 383.79: CLP and CDL

Eligible military personnel. The second part of the rule addresses active duty military service members who are stationed in a State different from the State in which they claim domicile. These members would need to verify with the State of station and the State of domicile that both States plan to participate in the licensing procedures allowed by this rule.

Current procedures. Currently, if active duty service members wish to obtain a CLP or CDL, they must either (1) apply for a CLP or CDL in person in their State of domicile, or (2) transfer their existing license, and thereby State of domicile, to the State where they now live or are stationed.

Changes today. Today's final rule enables States to allow eligible military personnel to apply and be tested for a CLP or CDL in the State where they are stationed, without having to travel to or change their State of domicile.

Requirements for States. Today's final rule is permissive. SDLAs are permitted (but not required) to accept CLP/CDL applications from eligible military personnel stationed there. However, the information, forms, and procedures used by the State where the driver is stationed would have to be acceptable to the State of domicile. If either State in this pair decided not to cooperate with the other State, the licensing alternative allowed by this rule would not be possible with respect to those two States.

Description of the procedure for exchanging a CLP or CDL. As noted elsewhere in this rule, FMCSA is allowing flexibility for individual States to reach agreements on the most efficient means of allowing a military member stationed outside his or her domicile State to obtain a CDL without physically returning to that State. FMCSA recognizes that States might have unique CDL licensing requirements or processes and is therefore not establishing a single process that all States must follow. One possible scenario for how this could work is presented below, but other alternatives may also work. FMCSA encourages the States to find the most efficient process that minimizes variations in their individual licensing procedures to support the affected military members.

Example: An active duty member of the armed forces is stationed at State 1 (State of station) but domiciled in State 2 (State of domicile or home State). The driver has a current non-CDL driver's license in the State of domicile, and wants to get a CDL while maintaining his or her current State of domicile.

Step One: The service member contacts both State 1 and State 2 SDLAs to determine if State 1 will give the knowledge and skills tests, and if State 2 will accept the results of those tests administered by State 1 and issue a CDL.

If both States do not agree to the process, then the service member cannot use this exemption, and must either change his or her State of domicile, or return to the State of domicile for issuance of a CLP or CDL.

Step Two: If both SDLAs agree to the licensing alternative allowed by this rule, the service member fills out State 2's CLP application which can be on line or hard copy, whichever is State 2's preference.

If State 2 charges a fee, the service member pays State 2.

Step Three: The service member goes to State 1's SDLA with his/her military ID and proof of being stationed in State 1 and shows either his/her paper application from State 2 or proof of filling out State 2's application electronically.

If State 1 charges a fee, the service member pays State 1.

If the service member seeks a CDL, State 1 validates his/her identity at the counter, as well as proof of citizenship or lawful permanent residency; valid CDL medical certification; and expected interstate or intrastate operation.

Step Four: For a CLP, State 1 gives the knowledge test, and transmits passing results to State 2 electronically.

Step Five (a): State 2 sends a CLP document to State 1; or *Step Five (b):* State 2 sends a CLP document directly to the service member.

Step Six: If following Step Five (a), the service member goes to State 1's SDLA where he or she took the knowledge test and receives the CLP document.

Step Seven: The service member trains and practices driving, and presents himself/herself to State 1 to take the skills test, where his/her identity and citizenship are again verified by the State 1 SDLA. If the driver passes the skills test, the result is transmitted to State 2 electronically.

Step Eight: Either

a. State 2 SDLA sends a CDL to State 1's SDLA. or

b. The service member mails his/her CLP and non-CDL license issued by State 2, to State 2, and State 2 sends the new State 2-issued CDL by mail to the applicant.

Step Nine: If option a. is followed, the service member goes to the State 1 SDLA where he or she took the skills test, and surrenders his/her CLP and non-CDL license issued by State 2 (which State 1 then destroys), and receives the State 2-issued CDL.

IX. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries that they operate in, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences amongst nations.

X. Section-by-Section

Section 383.5 adds definitions of ''military service member'' and ''military services'' in alphabetical order.

Section 383.77 extends the period during which States may waive the skills test of certain former military drivers from 90 days to 1 year in § 383.77(b)(1).

Section 383.79 is slightly revised. The title of this section is changed to reflect the expanded content: ''Skills testing of out-of-State students; Knowledge and skills testing of military personnel.''

Section 383.79(a)(1) and (2) contain the material previously designated as § 383.79(a) and (b), concerning *CDL applicants trained out-of-State.*

New § 383.79(b), *Military service member applicants for a CLP or CDL,* includes the licensing options described above. Paragraph (b)(1), *State of duty station,* along with its three subparagraphs, authorize (but do not require) States where active-duty military personnel are stationed, but not domiciled, to accept and process CLP and CDL applications from such personnel, to administer the required tests for these licenses, and to destroy existing licenses. Paragraph (b)(2), *Electronic transmission of the application and test results,* details the process for the State where these military personnel are stationed to transmit the necessary forms and test results to the applicant's State of domicile. Paragraph (b)(3), *State of domicile,* along with its two subparagraphs, explains that the State of domicile may (but is not required to) accept such forms and test results; if it

does so, it will issue the appropriate CLP or CDL.

Section 384.301 is amended by adding new paragraph (j) to require substantial compliance by States three years from the effective date of the final rule.

XI. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. However, FMCSA did evaluate the costs and benefits of this rulemaking. This rulemaking will not result in an annual effect on the economy of $100 million or more, lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. This rule amends existing procedures and practices governing administrative licensing actions.

Costs and Benefits

FMCSA evaluated potential costs and benefits associated with this rulemaking and estimates that these changes could result in net benefits between $3.2 million and $7.7 million over 10 years, discounted at 7%. The following sections provide an overview of this analysis.

Section 383.77

The final rule will extend the time States are allowed to accept applications for a skills test waiver from certain former service members from 90 days to 1 year. This action codifies an existing exemption published on July 8, 2014 (79 FR 38645). That notice granted immediate relief from 49 CFR 383.77(b)(1) to certain military service members separating from active duty. The exemption did not change the CFR language and is effective for only 2 years, although it could be extended.

As the final rule will codify an existing practice, FMCSA does not expect this revision to have any significant economic impact. However, the Agency believes that permanently granting military personnel with CMV driving experience more time to apply for a CDL after separation from service will be beneficial to both service members and prospective employers by creating more employment opportunities.

Section 383.79(b)

This rule will allow States to accept CLP and CDL applications from certain military drivers stationed in that State; to test their knowledge and skills; and to submit the results of both tests to the drivers' State of domicile for issuance of the CLP and CDL. This information can be transmitted using the same electronic system that was previously established for the skills test. The rule will not require States to use either the CSTIMS or ROOSTR. Both of these systems are currently managed by AAMVA, and States that are already using them would incur minimal costs to use them to transmit CLP/CDL test results. While some software modifications and updates may be required to allow transmission of the knowledge test results (as only skills test results are presently transmitted via these systems), FMCSA anticipates that AAMVA will update CSTIMS and ROOSTR to allow for transmission of knowledge test results during a routine IT upgrade cycle, with minimal additional cost. However, the final rule does not require use of either of these systems. States may incur costs for working out the details of application transmission between States. FMCSA expects that States will take advantage of the flexibilities allowed in the final rule, and participate when it is cost effective to do so. Additionally, the State of station can charge a processing fee to recoup the cost of providing this service.

FMCSA expects that this rule will ultimately result in a cost savings for drivers, but some of the cost savings will be offset by the additional processing fee. Based on comments received on the NPRM, FMCSA anticipates that drivers will continue to pay the CDL licensing and application fee to their State of domicile, and will pay an additional processing fee to the State of station. FMCSA estimates that the processing fee will be similar to the State CDL application fee. Many States do not publish their application fee separately, but bundle it with the license fees. The average CDL application and license fee for all 50 States and the District of Columbia is $50. However, the CDL term for States ranges from 4 to 8 years. On an annual basis, the cost of the average CDL application for all 50 States and the District of Columbia is $10. Therefore, FMCSA estimates that the one-time processing fee will range from $10 to $50 per driver, and conservatively estimates a fee of $50 for the purposes of this analysis. Both States utilizing the alternative licensing procedures allowed by this rule might charge fees, but some currently waive their normal fees for veterans or active-duty military personnel and may continue to do so. Because FMCSA cannot predict the number of military drivers who would have their additional processing fee waived by the State of Station, we have based our calculations on each military driver paying an extra fee.

To estimate how many drivers might take advantage of this provision, FMCSA started with the number of drivers who have used the military skills test waiver. Between May 2011 and February 2015, more than 10,100 skills test waivers were granted for military drivers, or an average of approximately 2,460 per year.[3] For purposes of this analysis, FMCSA assumed that number would remain constant in future years. To estimate the number of drivers who may be stationed in a State other than their State of domicile and who, thus, could potentially take advantage of this provision, FMCSA used an estimate of the number of drivers who attend training outside their State of domicile from the Regulatory Evaluation conducted for the 2011 ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' final rule.[4] According to this evaluation, approximately 25 percent of drivers obtained training outside their State of domicile. It is likely that more than 25 percent of military personnel are stationed outside their State of domicile. However, for purposes of this analysis FMCSA used the 25 percent estimate to calculate the population of drivers who may apply for a CLP/CDL outside their State of domicile. Based on these assumptions, this provision affects approximately 660 drivers each year.

FMCSA estimated the processing fee by multiplying the 660 drivers by the per-driver processing fee of $50. The 10-year costs for the additional processing fee total $330,000 undiscounted, $290,000 discounted at 3%, and $248,000 discounted at 7%.

This rule will also result in cost savings, or benefits, for drivers in the

[3] Estimated based on information from an assessment of SDLAs, conducted by FMCSA in February 2015.

[4] Final Rule Regulatory Evaluation. *Commercial Driver's License Testing and Commercial Learner's Permit Standards.* 76 FR 26853. May 9, 2011. Docket No. FMCSA–2007–27659. *https://www.federalregister.gov/articles/2011/05/09/2011-10510/commercial-drivers-license-testing-and-commercial-learners-permit-standards.*

form of reduced travel costs. The rule will allow States where active-duty military personnel are stationed to accept CLP or CDL applications and administer knowledge and skills tests for those personnel. The rule will allow any such State to transmit copies of the application and test results for military personnel to the driver's State of domicile, which in turn may—but is not required to—issue a CLP or CDL on the basis of that information. Absent this rule, drivers would be required to travel to the State of domicile in order to apply for a CLP or CDL. For example, if the driver is stationed in Virginia but his/her State of domicile is Texas (and both States use the licensing alternative allowed by this rule), Texas will be able to issue the driver a CLP and CDL based on an application and successful testing conducted in Virginia. The driver would be spared the travel costs of returning to Texas in order to file an application for a CLP or CDL.

FMCSA does not have information on the States where these drivers are domiciled or stationed. To estimate the potential costs savings, FMCSA used the scenario of a driver who is stationed in Virginia but domiciled in Texas. To present an upper and lower bound estimate of the potential cost savings, FMCSA evaluated two scenarios in which the driver travels between Norfolk, Virginia, and Houston, Texas. In the first scenario, the driver takes a commercial flight. FMCSA estimates that a typical roundtrip flight between Norfolk and Houston costs approximately $700.[5] In the second scenario, the driver drives a private vehicle between these locations. The current private vehicle mileage rate from the General Services Administration (GSA) is $0.575 per mile [6] and the distance between Norfolk and Houston is approximately 2,800 miles, roundtrip. FMCSA estimates that it would cost the driver approximately $1,610 to drive between Virginia and Texas for CDL testing.

To estimate the potential cost savings, FMCSA multiplied the round trip flight price by the annual affected driver population to calculate the lower-bound estimate, and multiplied the mileage cost by the annual affected driver population to calculate the upper-bound estimate. Based on the estimated participation rates, the total savings would be between $4.6 million and $10.6 million undiscounted, $4.1 million and $9.3 million discounted at 3%, $3.5 million and $8.0 million discounted at 7%. In addition, the driver might incur lodging costs and other expenses depending on the location of the testing; however, these potential cost savings were not included in this analysis.

FMCSA calculated the net benefits of this rule by subtracting the processing fee cost from the travel cost savings. As shown in Table 1, the per driver benefits range from $650 to $1,560. The total 10-year net benefits range from $3.2 million to $7.7 million, discounted at 7%.

TABLE 1—ESTIMATED ANNUAL AND 10-YEAR NET BENEFITS FOR OUT OF STATE DRIVERS

Scenario	Drivers per year	Net benefits per driver	Total net benefits per year	10-year total (3% discount rate)	10-year total (7% discount rate)
Lower-Bound (flight)	660	$650	$429,000	$3,769,241	$3,224,035
Upper-Bound (car travel)	660	1,560	1,029,600	9,046,178	7,737,683

In addition to the cost savings described above, there may be other non-quantified benefits associated with these provisions. For example, this proposal also allows military personnel to enter the job market more quickly after separation from service. This rulemaking may also increase the availability of drivers qualified to work for motor carriers, since military personnel would be able to complete their testing and licensing during their separation process. Finally, reducing unemployment for former military personnel may also reduce the amount of unemployment compensation paid by the Department of Defense to former service members.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the standards of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857) (SBREFA), this rule will not impose a significant economic impact on a substantial number of small entities because the revisions would either codify an existing practice or allow States to provide more flexibility for military personnel seeking to obtain a CDL. FMCSA does not expect the changes to impose any new or increased costs on small entities. Consequently, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Selden Fritschner, listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's

[5] The flight price $700 was estimated using the General Service Administration *Airline City Pairs Search Tool* for flights between Norfolk, Virginia and Houston, Texas. *http://cpsearch.fas.gsa.gov/.*

[6] U.S. General Services Administration. Privately Owned Vehicle (POV) Mileage Reimbursement Rates, as of January 1, 2015. *http://www.gsa.gov/portal/content/100715.*

Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, taken together, or by the private sector of $155 million (which is the value of $100 million in 1995 after adjusting for inflation to 2014 levels) or more in any 1 year. Though this final rule will not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

E. Paperwork Reduction Act

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

F. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' FMCSA has determined that this rule will not have substantial direct costs on or for States, nor will it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

G. E.O. 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

H. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could present an environmental or safety risk that could disproportionately affect children.

I. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

J. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of PII.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. All records associated with this rulemaking are State, not Federal, records.

The E-Government Act of 2002, Public Law 107–347, 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. As a result, FMCSA has not conducted a privacy impact assessment.

K. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

L. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

M. E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

N. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

O. Environment (NEPA, CAA, E.O. 12898 Environmental Justice)

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph

6.s.(6). The Categorical Exclusion (CE) in paragraph 6.s.(6) covers a requirement for States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard. The content in this rule is covered by this CE and the final action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the *Regulations.gov* Web site listed under I. Rulemaking Documents.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, ''disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations'' in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this final rule in accordance with the E.O., and has determined that it has no environmental justice implications, nor is there any collective environmental impact that will result from its promulgation.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III, parts 383 and 384 to read as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 continues to read as follows:

Authority: Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 7208 of Pub. L. 114–94, 129 Stat. 1312, 1593; and 49 CFR 1.87.

■ 2. Amend § 383.5 by adding definitions of ''military service member'' and ''military services'' in alphabetical order to read as follows:

§ 383.5 Definitions.

* * * * *

Military service member means a member of the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, and their associated reserve, and National Guard units.

Military services means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, and their associated reserve and National Guard units.

* * * * *

■ 3. Amend § 383.77 by revising paragraph (b)(1) to read as follows:

§ 383.77 Substitute for driving skills tests for drivers with military CMV experience.

* * * * *

(b) * * *

(1) Is regularly employed or was regularly employed within the last year in a military position requiring operation of a CMV;

* * * * *

■ 4. Revise § 383.79 to read as follows:

§ 383.79 Skills testing of out-of-State students; Knowledge and skills testing of military personnel.

(a) *CDL applicants trained out-of-State*—(1) *State that administers the skills test.* A State may administer its skills test, in accordance with subparts F, G, and H of this part, to a person who has taken training in that State and is to be licensed in another United States jurisdiction (*i.e.,* his or her State of domicile). Such test results must be transmitted electronically directly from the testing State to the licensing State in an efficient and secure manner.

(2) *The State of domicile.* The State of domicile of a CDL applicant must accept the results of a skills test administered to the applicant by any other State, in accordance with subparts F, G, and H of this part, in fulfillment of the applicant's testing requirements under § 383.71, and the State's test administration requirements under § 383.73.

(b) Military service member applicants for a CLP or CDL—(1) *State of duty station.* A State where active duty military service members are stationed, but not domiciled, may:

(i) Accept an application for a CLP or CDL from such a military service member who has

(A) A valid driver's license from his or her State of domicile,

(B) A valid active duty military identification card, and

(C) A current copy of either the service member's military leave and earnings statement or his or her orders;

(ii) Administer the knowledge and skills tests to the military service member, as appropriate, in accordance with subparts F, G, and H of this part, or waive the skills test in accordance with § 383.77; and

(iii) Destroy a driver's license on behalf of the State of domicile, unless the latter requires the license to be surrendered to its own driver licensing agency.

(2) *Electronic transmission of the application and test results.* The State of duty station must transmit the completed application, the results of knowledge and skills tests, and any supporting documents, by a direct, secure, and efficient electronic system.

(3) *State of domicile.* Upon completion of the applicant's application and testing requirements under § 383.71, and the State's test administration requirements under § 383.73, the State of domicile of the military service member applying for a CLP or CDL may

(i) Accept the completed application; the results of knowledge and skills tests administered to the applicant by the State where he or she is currently stationed, or the notice of the waiver of the skills test, as authorized by paragraph (b)(1)(ii) of this section; and any supporting documents; and

(ii) Issue the applicant a CLP or CDL.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 5. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; and 49 CFR 1.87.

■ 6. Add paragraph (j) to § 384.301 to read as follows:

§ 384.301 Substantial compliance general requirements.

* * * * *

(j) A State must come into substantial compliance with the requirements of subpart B of this part and part 383 of this chapter in effect as of December 12, 2016 as soon as practicable, but, unless otherwise specifically provided in this part, not later than December 12, 2019.

Issued under authority delegated in 49 CFR 1.87 on: October 4, 2016.

T.F. Scott Darling, III,

Administrator.

[FR Doc. 2016–24749 Filed 10–12–16; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
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Thursday, October 13, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9189; Directorate Identifier 2016–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This proposed AD was prompted by reports of passenger service units (PSUs) becoming detached from the supporting airplane structure in several Model 737 airplane incidents that exceeded the design emergency load requirements for the PSUs. This proposed AD would require modifying the PSUs and life vest panels by removing the existing inboard lanyard and installing two new lanyards on the outboard edge of the PSUs and life vest panels. We are proposing this AD to prevent PSUs and life vest panels from detaching from the supporting airplane structure, which could lead to passenger injuries and impede passenger and crew egress during evacuation.

DATES: We must receive comments on this proposed AD by November 28, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9189.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9189; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Scott Craig, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone 425–917–6592; fax 425–917–6590; email: *michael.s.craig@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9189; Directorate Identifier 2016–NM–114–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of PSUs becoming detached from the supporting airplane structure in several Model 737 airplane incidents that exceeded the design emergency load requirements for the PSUs. These incidents resulted in injuries to passengers' faces and heads, which may have occurred when the PSUs became dislodged and encroached into the passengers' occupiable space. Additionally, many of the PSUs above aisle seats that separated from their overhead bins were found in the cabin aisle. Such an obstruction in the rows and aisles, especially at overwing emergency exits, could delay emergency evacuation for passengers and crew. Detached PSUs and life vest panels, if not corrected, could result in passenger injuries and impede passenger and crew egress during evacuation.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Service Bulletin 737–25–1707, dated September 24, 2015. The service information describes procedures for modifying the PSUs and life vest panels by removing the existing inboard lanyard and installing two new lanyards on the outboard edge of the PSUs and life vest panels. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9189.

Costs of Compliance

We estimate that this proposed AD affects 1,087 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
PSU modification	68 work-hours × $85 per hour = $5,780	$16,100	$21,880	$23,783,560
Life vest panel modification	9 work-hours × $85 per hour = $765	2,004	2,769	3,009,903

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–9189; Directorate Identifier 2016–NM–114–AD.

(a) Comments Due Date

We must receive comments by November 28, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, as identified in Boeing Service Bulletin 737–25–1707, dated September 24, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 25; Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports of passenger service units (PSUs) becoming detached from the supporting airplane structure in several Model 737 airplane incidents that exceeded the design emergency load requirements. We are issuing this AD to prevent PSUs and life vest panels from detaching from the supporting airplane structure, which could lead to passenger injuries and impede passenger and crew egress during evacuation.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Installation

Within 60 months after the effective date of this AD: Do the applicable actions required in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–25–1707, dated September 24, 2015.

(1) For all airplanes: Remove the existing lanyard and install new lanyard assemblies in the PSUs.

(2) For Group 2 airplanes, as identified in Boeing Service Bulletin 737–25–1707, dated September 24, 2015: Remove the existing lanyard and install new lanyard assemblies in the life vest panels.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (h)(4)(i) and (h)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures

identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(i) Related Information

(1) For more information about this AD, contact Scott Craig, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone 425–917–6592; fax 425–917–6590; email: *michael.s.craig@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 27, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–24508 Filed 10–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9173; Airspace Docket No. 16–AAL–2]

Proposed Amendment of Class E Airspace, Barter Island, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Barter Island LRRS Airport, Barter Island, AK because the North Slope Borough is relocating the airport. The FAA found modification of this airspace and adjustment of the airport's geographic coordinates necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 28, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2016–9173; Airspace Docket No. 16–AAL–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Barter Island LRRS Airport, Barter Island, AK.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2016–9173/Airspace Docket No. 16–AAL–2.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Barter Island LRRS Airport, Barter Island, AK. The North Slope Borough is relocating the airport approximately 2 miles southwest to address oceanic erosion issues at this remote location. The airspace would be modified to a 6.4-mile radius of the airport. Modification of the airspace is necessary for the safety and management of IFR operations at the airport. Additionally, the airport's geographic coordinates would be updated to lat. 70°06′47″ N., long. 143°39′13″ W.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Barter Island, AK [Modified]

Barter Island LRRS Airport, AK
(Lat. 70°06′47″ N., long. 143°39′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Barter Island LRRS Airport, and that airspace extending upward from 1,200 feet above the surface within a 83-mile radius of Barter Island LRRS Airport, excluding that airspace east of 141° west longitude and excluding that airspace that extends beyond 12 miles of the shoreline.

Issued in Seattle, Washington, on October 3, 2016.

Richard Roberts,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–24625 Filed 10–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 360

[Docket Number: 160803687–6687–01]

RIN 0625–AB09

Steel Import Monitoring and Analysis System

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: The Department of Commerce (the Department) publishes this proposed rule to request public comments on proposed modifications to the regulations for the Steel Import Monitoring and Analysis (SIMA) System that would extend the system until March, 2022. Extension of the authority for the SIMA System will ensure the Department's ability to track as early as possible certain steel mill imports into the United States and make the import data publicly available approximately five weeks in advance of the full public trade data release by the Bureau of the Census. Having such access to information about steel imports provides the public with greater knowledge to evaluate current market conditions.

DATES: Comments must be submitted on or before 5 p.m. November 14, 2016.

ADDRESSES: As specified above, to be assured of consideration, comments must be received no later than 30 days after the publication of this notice in the **Federal Register**. All comments must be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov,* into Docket Number ITA–2016–0008, unless the commenter does not have access to the Internet. Commenters that do not have access to the Internet may submit the original and two copies of each set of comments by mail or hand delivery/courier. Please address the written comments to the Secretary of Commerce, Attention: Steven Presing, Director for Industry Support and Analysis, Enforcement and Compliance, Room 2845, Enforcement and Compliance, U.S. Department of Commerce, Constitution Avenue and 14th Street NW., Washington, DC 20230. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this

notice will be a matter of public record and will be available for inspection at Enforcement and Compliance's Central Records Unit (Room 18022 of the Herbert C. Hoover Building) and on the Department's Web site at *http://trade.gov/enforcement/*and on *www.regulations.gov*. address: *webmaster-support@trade.gov*. All **Federal Register** notices regarding the SIMA system and comments can be accessed via *http://enforcement.trade.gov/steel/license/SIMA-FR-Notices.html*.

FOR FURTHER INFORMATION CONTACT: For information on the SIMA System, please contact Steven Presing (202) 482–1672 or Julie Al-Saadawi (202) 482–1930.

SUPPLEMENTARY INFORMATION: On March 2, 2002, President George W. Bush authorized the implementation of a steel import licensing and monitoring program by issuing Proclamation 7529, which placed temporary tariffs on certain steel imports. The monitoring system outlined in Proclamation 7529 required all importers of steel products to obtain a license from the Department of Commerce prior to completing Customs entry summary documentation. This monitoring tool ensured that the effectiveness of the safeguard was not undermined by large quantities of imports originating from countries that were excluded from the application of the tariffs. Pursuant to Proclamation 7529, on December 31, 2002, the Department of Commerce issued final regulations setting forth the ''Steel Import Licensing and Surge Monitoring Program'' (67 FR 79845). In Proclamation 7741 of December 4, 2003 (68 FR 68483), the President terminated the temporary tariffs, but directed the Secretary of Commerce to continue the steel import licensing and monitoring system until the earlier of March 21, 2005, or such time as the Secretary of Commerce established a replacement monitoring program. On December 9, 2003 (68 FR 68594), the Department published a notice stating that the monitoring system would continue to be in effect as described in Proclamation 7741 until March 21, 2005. Prior to the March 21, 2005, termination date, the Department of Commerce determined that there continued to be a need to collect import data, and published an interim rule (70 FR 12136, March 11, 2005) revising part 360 to slightly expand the monitoring program, and a final rule (70 FR 72373, December 5, 2005) continuing the program through March 21, 2009; at this time the system became known as SIMA. On March 18, 2009, the Department of Commerce published a final rule (74 FR 11474) in the **Federal Register** to continue the SIMA System and extend the program until March 21, 2013. On February 15, 2013, the Department of Commerce published a final rule (78 FR 11090) to continue the SIMA System and extend the program until March 21, 2017, unless further extended upon review and notification in the **Federal Register**.

This proposed rule would extend the implementation of the SIMA System until March 21, 2022 (*see* 19 CFR part 360). This extension would continue the Department's ability to track certain steel mill imports into the United States and make the import data publicly available approximately five weeks in advance of the full trade data release.

The purpose of the SIMA System is to provide steel producers, steel consumers, importers, and the general public with accurate and timely information on anticipated imports of certain steel products into the United States. Steel import licenses, issued through the online SIMA licensing system, are required by U.S. Customs and Border Protection for filing entry paperwork for imports of certain steel mill products into the United States. Import data collected through the issuance of the licenses are aggregated weekly and posted on the publicly available Steel Import Monitor. Details of the current monitoring system can be found at *http://enforcement.trade.gov/steel/license/*.

SIMA's renewal comes at a time of significant challenges to the steel sector due, in part, to the extensive structural excess production capacity currently present in the global steel industry, which exacerbates import pressures and increases market volatility. The domestic steel industry and other steel market participants have previously expressed support for the SIMA System because it permits all participants to monitor import fluctuations in a timely manner. *See Steel Import Monitoring Analysis System,* 78 FR 11090, 11091 (February 15, 2013).

All comments responding to this notice will be a matter of public record and available for public inspection and copying on *www.Regulations.gov* and at Enforcement and Compliance's Central Records Unit, Room 18022, between the hours of 8:30 a.m. and 5 p.m. on business days.

Classification

Regulatory Flexibility Act. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* A summary of the factual basis for this certification is below.

This rule, if implemented, would extend the current SIMA System until March 21, 2022. The entities that would be impacted by this rule are importers and brokerage companies who import steel mill products. These entities would be required to obtain steel import licenses through the online, automatic SIMA licensing system for filing entry paperwork required by U.S. Customs and Border Protection for U.S. imports of steel mill products. Based on statistics derived from current license applications, of the approximately 1,600 licenses issued each day, the Department estimates that fewer than two percent of the licenses would be filed by importers and brokerage companies that would be considered small entities.

Based on the current usage of SIMA, the Department does not anticipate that the extension of the SIMA System will have a significant economic impact. Companies are already familiar with the licensing of certain steel products under the current system. In most cases, brokerage companies will apply for the license on behalf of the steel importers. Most brokerage companies that are currently involved in filing documentation for importing goods into the United States are accustomed to Customs and Border Protection's automated entry filing systems. Today, more than 99% of the Customs filings are handled electronically. Therefore, the web-based, automated nature of this simple license application should not be a significant obstacle to any firm in completing this requirement. However, should an importer or brokerage company need to register for an account or apply for a license non-electronically, a fax/phone option will be available at the Department during regular business hours. There is no cost to register for a company-specific steel license account and no cost to file for the license. Each license form is expected to take less than 10 minutes to complete and collects much of the same information required on the Customs entry summary documentation. The steel import license is the only additional U.S. entry requirement that importers or their representatives must fulfill in order to import each covered steel product shipment.

Although the Department does not charge for licenses, the Department estimates that the likely aggregate license costs incurred by small entities in terms of the time to apply for licenses

as a result of this proposed rule would be less than two percent, or an estimated $37,151.00, of the estimated total $1,857,560.00 cost to all steel importers to process the on-line automatic licenses. These calculations were based on an hourly pay rate of $20.00 multiplied by the estimated 92,878 total annual burden hours. Based on the current patterns of license applications, the vast majority of the licenses are applied for by large companies. The approximate cost of a single license is less than 10 minutes of the applicant's time and this is reduced if applicants use templates or the electronic data interface for multiple licenses. This amounts to an average cost per license of $3.33.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

These requirements have been approved by OMB (OMB No.: 0625–0245; Expiration Date: 1/31/2018). Public reporting for this collection of information is estimated to be less than 10 minutes per response, including the time for reviewing instructions, and completing and reviewing the collection of information.

Paperwork Reduction Act Data

OMB Number: 0625–0245.

ITA Number: ITA–4141P.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit.

Estimated Number of Registered Users: 3,500.

Estimated Time per Response: Less than 10 minutes.

Estimated Total Annual Burden Hours: 92,878 hours.

Estimated Total Annual Costs: $0.00.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in EO 13132.

List of Subjects in 19 CFR Part 360

Administrative practice and procedure, Business and industry, Imports, Reporting and recordkeeping requirements, Steel.

Dated: October 4, 2016.

Ken Hyatt,

Acting Under Secretary for International Trade.

For the reasons discussed above, we propose amending 19 CFR part 360 as follows:

PART 360—STEEL IMPORT MONITORING AND ANALYSIS SYSTEM

■ 1. The authority citation for part 360 continues to read as follows:

Authority: 13 U.S.C. 301(a) and 302.

■ 2. Section 360.105 is revised to read as follows.

§ 360.105 Duration of the steel import licensing requirement.

The licensing program will be in effect through March 21, 2022, but may be extended upon review and notification in the **Federal Register** prior to this expiration date. Licenses will be required for all subject imports entered during this period, even if the entry summary documents are not filed until after the expiration of this program. The licenses will be valid for 10 business days after the expiration of this program to allow for the final filing of required Customs documentation.

[FR Doc. 2016–24649 Filed 10–12–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–442W]

Withdrawal of Notice of Intent to Temporarily Place Mitragynine and 7-Hydroxymitragynine Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Withdrawal of Notice of Intent; Solicitation of Comments.

SUMMARY: On August 31, 2016, the Drug Enforcement Administration (DEA) published in the **Federal Register** a notice of intent to temporarily place mitragynine and 7-hydroxymitragynine, which are the main psychoactive constituents of the plant Mitragyna speciosa, also referred to as kratom, into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act. Since publishing that notice, DEA has received numerous comments from members of the public challenging the scheduling action and requesting that the agency consider those comments and accompanying information before taking further action. In addition, DEA will receive from the Food and Drug Administration (FDA) a scientific and medical evaluation and scheduling recommendation for these substances, which DEA previously requested.

DEA is therefore taking the following actions: DEA is withdrawing the August 31, 2016 notice of intent; and soliciting comments from the public regarding the scheduling of mitragynine and 7-hydroxymitragynine under the Controlled Substances Act.

DATES: The notice of intent that was published on August 31, 2016 (81 FR 59929) is withdrawn as of October 13, 2016. The comment period will be open until December 1, 2016. All comments for the public record must be submitted electronically or in writing in accordance with the procedures outlined below. Electronic comments must be submitted, and written comments must be postmarked, on or before December 1, 2016. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period. Please note that if you previously submitted a comment via email or regular mail following the August 31, 2016 notice, that comment is being considered by DEA—it is not necessary to resubmit the same comment *unless* you wish to provide additional information, or you wish to have your comment posted for public view in accordance with the instructions provided below.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–442W'' on all correspondence, including any attachments.

• *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the Web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have

received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

• *Paper comments:* Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this notice are considered part of the public record. If you previously submitted a comment via email or regular mail following the August 31, 2016 notice, that comment is being considered by DEA—it is not necessary to resubmit the same comment unless you wish to provide additional information, or you wish to have your comment posted for public view in accordance with the instructions provided below.

All comments received in response to this notice of opportunity to comment will, unless reasonable cause is given, be made available by DEA for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much personal identifying information or confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) or confidential business information included in the text of your electronic submission that is not identified as directed above as personal or confidential.

Background

Withdrawal of Notice of Intent

The Controlled Substances Act (CSA) contains a temporary scheduling provision, 21 U.S.C. 811(h), pursuant to which the DEA Administrator [1] may temporarily place a substance in schedule I where he finds that doing so is necessary to avoid an imminent hazard to the public safety. This provision of the CSA requires DEA to publish a notice in the **Federal Register** of its intent to issue a temporary scheduling order at least 30 days before issuing any such order. DEA published such a notice of intent on August 31, 2016, with respect to mitragynine and 7-hydroxymitragynine, which are the main psychoactive constituents of the plant commonly known as kratom. 81 FR 59929.

In response to the notice of intent, DEA received numerous comments from the public on mitragynine and 7-hydroxymitragynine, including comments offering their opinions regarding the pharmacological effects of these substances. To allow consideration of these comments, as well as others received on or before December 1, 2016, DEA has decided to withdraw the August 31, 2016 notice of intent published at 81 FR 59929. DEA has also requested that the FDA expedite its scientific and medical evaluation and scheduling recommendation for these substances, which DEA previously requested in accordance with 21 U.S.C. 811(b).[2]

Accordingly, the August 31, 2016, notice of intent to temporarily place mitragynine and 7-hydroxymitragynine in schedule I is withdrawn. Mitragynine and 7-hydroxymitragynine therefore remain—as has been the case—noncontrolled substances under federal law.[3]

Consideration of Public Comments and FDA's Analysis

With respect to mitragynine and 7-hydroxymitragynine, DEA will consider all public comments received under the above procedures, as well as FDA's scientific and medical evaluation and scheduling recommendation for these substances. Once DEA has received and considered all of this information, DEA will decide whether to proceed with permanent scheduling of mitragynine and 7-hydroxymitragynine, or both permanent and temporary scheduling of these substances.

Permanent Scheduling Process: As the CSA provides, if DEA determines that the medical and scientific facts contained in the FDA scheduling evaluation, along with all other relevant data and information, constitute substantial evidence of potential for abuse to support permanent scheduling of mitragynine and 7-hydroxymitragynine, DEA will publish in the **Federal Register** a notice of proposed rulemaking, which will give interested members of the public an additional opportunity to submit comments and request a hearing.[4] As provided in 21 U.S.C. 811(a), permanent scheduling rules shall be made on the record after opportunity for a hearing pursuant to the rulemaking procedures prescribed by 5 U.S.C. 553, 556, and 557.

Temporary Scheduling Process: The pendency of permanent scheduling proceedings for a substance does not preclude a simultaneous or subsequent order to temporarily control that substance. If DEA finds in light of FDA's scientific and medical evaluation and after consideration of all public

[1] The Attorney General has delegated her functions under the CSA to the DEA Administrator.

[2] Section 811(b) provides that the scientific and medical evaluation and scheduling recommendation shall be conducted by the Secretary of Health and Human Services (HHS). This function has been delegated to the Assistant Secretary for Health. 58 FR 35460 (1993). Within HHS, the FDA has primary responsibility for conducting the evaluation and making the recommendation.

[3] Under some state and local laws, kratom and/or its constituents mitragynine and 7-hydroxymitragynine are currently listed as controlled substances or otherwise subject to control. Nothing in this publication alters the validity of such laws, or any pending state efforts to implement those laws or enact new laws controlling these substances.

[4] In permanent scheduling actions, when DEA reviews the FDA evaluation and scheduling recommendation, the FDA determinations as to scientific and medical matters are binding on DEA. 21 U.S.C. 811(b).

comments and other relevant information that, based on the criteria of section 811(h), temporary placement of mitragynine and 7-hydroxymitragynine in schedule I is necessary to avoid an imminent hazard to the public safety, DEA will follow the statutory procedures for issuing such a temporary scheduling order. As indicated above, before issuing such a temporary scheduling order, DEA would be required to publish in the **Federal Register** a new notice of intent.

Dated: October 6, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–24659 Filed 10–12–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–108934–16]

RIN 1545–BN38

User Fees for Offers in Compromise

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations that provide user fees for offers in compromise. The proposed amendments affect taxpayers who wish to pay their liabilities through offers in compromise. The proposed effective date for these proposed amendments to the regulations is for offers in compromise submitted on or after February 27, 2017. This document also provides a notice of public hearing on these proposed amendments to the regulations.

DATES: Written or electronic comments must be received by November 28, 2016. Outlines of topics to be discussed at the public hearing scheduled for December 16, 2016 at 10:00 a.m. must be received by November 28, 2016.

ADDRESSES: Send submissions to: Internal Revenue Service, CC:PA:LPD:PR (REG–108934–16), Room 5203, Post Office Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–108934–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–108934–16). The public hearing will be held in the Main IR Auditorium beginning at 10:00 a.m. in the Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed amendments to the regulations, Maria Del Pilar Austin at (202) 317–5437; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Regina Johnson, at (202) 317–6901; concerning cost methodology, Eva Williams, at (202) 803–9728 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations that would amend § 300.3 of the User Fee Regulations (26 CFR part 300), which provides for a user fee applicable to offers in compromise under section 7122 of the Internal Revenue Code (Code).

Section 7122(a) provides the Secretary the authority to compromise any civil or criminal case arising under the internal revenue laws, prior to the referral of that case to the Department of Justice. Section 7122(d)(1) requires the IRS to prescribe guidelines for officers and employees of the IRS to determine whether an offer in compromise is adequate and should be accepted to resolve a dispute. Those guidelines can generally be found in § 301.7122–1. Under those guidelines, an offer in compromise may be accepted if there is doubt as to liability, if there is doubt as to collectability, or if acceptance will promote effective tax administration. See § 301.7122–1(b).

When the IRS receives an offer in compromise, it initially determines whether the taxpayer submitting the offer is eligible for the offer in compromise program and, if the taxpayer is eligible, whether the offer submitted is otherwise processable. Currently, a taxpayer may be ineligible for the offer in compromise program for a number of reasons, including if the taxpayer is in bankruptcy or has not filed all required tax returns. The IRS will return an offer as nonprocessable if the taxpayer is ineligible or if the offer has not been properly submitted.

If the IRS determines the offer in compromise is processable, then except where the offer is made under section 7122(d)(3)(B) relating only to issues of liability and the case is processed without a financial investigation, the IRS investigates and verifies the taxpayer's financial information submitted with the offer to determine whether such a compromise is appropriate before accepting the terms of the offer in compromise. If the IRS initially rejects a processable offer in compromise based on an investigation of the taxpayer's financial position, section 7122(e)(1) provides that the IRS must conduct an independent administrative review of that decision before communicating the rejection to the taxpayer. If the independent administrative review upholds the IRS's initial decision to reject a processable offer in compromise, section 7122(e)(2) provides that the taxpayer is notified of the rejection and has the right to appeal the rejection to the IRS's Appeals Office. When the IRS accepts an offer in compromise, the IRS processes the payments and monitors the taxpayer's compliance with the terms of the offer.

Under § 300.3, the IRS currently charges $186 for processing an offer in compromise, which includes reviewing and monitoring the offer. Under § 300.3(b)(2)(i) and (ii), if a fee is charged and the offer is accepted to promote effective tax administration or accepted based on doubt as to collectability where the IRS has determined that collection of an amount greater than the amount offered would create economic hardship, then the user fee is applied against the amount to be paid under the offer unless the taxpayer requests that it be refunded. Section 300.3(b)(1)(i) and (ii) provide that no fee is charged if an offer is based solely on doubt as to liability, or made by a low-income taxpayer.

Explanation of Provisions

A. Overview

To bring the user fee rate for offers in compromise closer to the full cost to the IRS of providing this taxpayer specific service, the proposed regulations under § 300.3 would increase the user fee for an offer in compromise to $300. The proposed regulations do not modify other portions of the User Fee Regulations regarding offers in compromise, such as § 300.3(b)(1)(i) and (ii) which waive the user fee for offers in compromise submitted by low-income taxpayers and offers in compromise based solely on doubt as to liability. The increased user fee for offers in compromise is proposed to be effective for offers submitted on or after February 27, 2017.

B. User Fee Authority

The Independent Offices Appropriations Act (IOAA) (31 U.S.C.

9701) authorizes each agency to promulgate regulations establishing the charge for services provided by the agency (user fees). The IOAA provides that these user fee regulations are subject to policies prescribed by the President and shall be as uniform as practicable. Those policies are currently set forth in the Office of Management and Budget (OMB) Circular A–25, 58 FR 38142 (July 15, 1993; OMB Circular).

The IOAA states that the services provided by an agency should be self-sustaining to the extent possible. 31 U.S.C. 9701(a). The OMB Circular states that agencies that provide services that confer special benefits on identifiable recipients beyond those accruing to the general public are to establish user fees that recover the full cost of providing those services. The OMB Circular requires that agencies identify all services that confer special benefits and determine whether user fees should be assessed for those services.

Agencies are to review user fees biennially and update them as necessary to reflect changes in the cost of providing the underlying services. During this biennial review, an agency must calculate the full cost of providing each service, taking into account all direct and indirect costs to any part of the U.S. government. The full cost of providing a service includes, but is not limited to, salaries, retirement benefits, rents, utilities, travel, and management costs, as well as an appropriate allocation of overhead and other support costs associated with providing the service.

An agency should set the user fee at an amount that recovers the full cost of providing the service unless the agency requests, and the OMB grants, an exception to the full cost requirement. The OMB may grant exceptions only where the cost of collecting the fees would represent an unduly large part of the fee for the activity or any other condition exists that, in the opinion of the agency head, justifies an exception. When the OMB grants an exception, the agency does not collect the full cost of providing the service and therefore must fund the remaining cost of providing the service from other available funding sources. By doing so, the agency subsidizes the cost of the service to the recipients of reduced-fee services even though the service confers a special benefit on those recipients who should otherwise be required to pay the full costs of receiving that benefit as provided for by the IOAA and the OMB Circular.

C. Offer in Compromise Program User Fee

The offer in compromise program confers a special benefit on identifiable recipients beyond those accruing to the general public. A taxpayer with an accepted offer in compromise receives the special benefit of resolving his or her tax liabilities for a compromised amount, provided the taxpayer complies with the terms of the offer, and the benefit of paying the compromised amount over a period not to exceed 24 months. Further, section 6331(k)(1) of the Code generally prohibits the IRS from levying to collect taxes while a request to enter into an offer in compromise is pending, for 30 days after a rejection, and, if a timely appeal of a rejection is filed, for the duration of the appeal. Because of these special benefits, the IOAA and the OMB Circular authorize the IRS to charge a user fee for the offer in compromise that reflects the full cost of providing the service of the offer in compromise program to the taxpayer.

The amount of the offer in compromise user fee was last changed in 2014. As required by the IOAA and the OMB Circular, the IRS completed its 2015 biennial review of the offer in compromise program and determined that the full cost of an offer in compromise is $2,450.

In accordance with the OMB Circular, this proposed amendment to the regulations increases the offer in compromise fee to recover more of the costs associated with such offers. These proposed regulations propose to charge less than full cost. While agencies are generally required to charge full cost, the OMB Circular permits certain limited exceptions to this requirement. The IRS requested and the OMB approved an exception to the full cost requirement. The proposed fee for processing an offer in compromise is $300. In light of constraints on IRS resources for tax administration, the Treasury Department and the IRS have determined that it is necessary to recoup more of the costs of the offer in compromise program. The IRS will continue its practice of providing services subject to user fees at costs less than otherwise charged where there is a compelling tax administration reason to do so. Therefore, these proposed regulations do not modify the portions of the current regulations that except low-income taxpayers and offers based on doubt as to liability from the user fee. The proposed fee balances the need to recover more of the costs with the goal of encouraging offers in compromise.

As required under the OMB Circular, the IRS will review the user fee for offers in compromise during its 2017 biennial review. The IRS also plans to evaluate the impact of the current proposed fee increase on the offer in compromise program, and the IRS will take this impact into consideration when revising the offer in compromise user fee in the future.

D. Calculation of User Fees Generally

User fee calculations begin by first determining the full cost for the service. The IRS follows the guidance provided by the OMB Circular to compute the full cost of the service, which includes all indirect and direct costs to any part of the U.S. government including but not limited to direct and indirect personnel costs, physical overhead, rents, utilities, travel, and management costs. The IRS's cost methodology is described below.

Once the total amount of direct and indirect costs associated with a service is determined, the IRS follows the guidance in the OMB Circular to determine the costs associated with providing the service to each recipient, which represents the average per unit cost of that service. This average per unit cost is the amount of the user fee that will recover the full cost of the service.

The IRS follows generally accepted accounting principles (GAAP), as established by the Federal Accounting Standards Advisory Board (FASAB) in calculating the full cost of providing services. The FASAB Handbook of Accounting Standards and Other Pronouncements, as amended, which is available at *http://files.fasab.gov/pdffiles/2015_fasab_handbook.pdf,* includes the Statement of Federal Financial Accounting Standards SFFAS No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government (SFFAS No. 4). SFFAS No. 4 establishes internal costing standards under GAAP to accurately measure and manage the full cost of federal programs. The methodology described below is in accordance with SFFAS No. 4.

1. Cost Center Allocation

The IRS determines the cost of its services and the activities involved in producing them through a cost accounting system that tracks costs to organizational units. The lowest organizational unit in the IRS's cost accounting system is called a cost center. Cost centers are usually separate offices that are distinguished by subject-matter area of responsibility or geographic region. All costs of operating a cost center are recorded in the IRS's cost accounting system and allocated to

that cost center. The costs allocated to a cost center are the direct costs for the cost center's activities as well as all indirect costs, including overhead, associated with that cost center. Each cost is recorded in only one cost center.

2. Determining the Per Unit Cost

To establish the per unit cost, the total cost of providing the service is divided by the volume of services provided. The volume of services provided includes both services for which a fee is charged as well as subsidized services. The subsidized services are those where OMB has approved an exception to the full cost requirement, for example, to charge a reduced fee to low-income taxpayers. The volume of subsidized services is included in the total volume of services provided to ensure that the IRS, and not those who are paying full cost, subsidizes the cost of the reduced-cost services.

3. Cost Estimation of Direct Labor and Benefits

Not all cost centers are fully devoted to only one service for which the IRS charges a user fee. Some cost centers work on a number of different services. In these cases, the IRS estimates the cost incurred in those cost centers attributable to the service for which a user fee is being calculated by measuring the time required to accomplish activities related to the service, and estimating the average time required to accomplish these activities. The average time required to accomplish these activities is multiplied by the relevant organizational unit's average labor and benefits cost per unit of time to determine the labor and benefits cost incurred to provide the service. To determine the full cost, the IRS then adds an appropriate overhead charge as discussed below.

4. Calculating Overhead

Overhead is an indirect cost of operating an organization that cannot be immediately associated with an activity that the organization performs. Overhead includes costs of resources that are jointly or commonly consumed by one or more organizational unit's activities but are not specifically identifiable to a single activity. These costs can include:

- General management and administrative services of sustaining and support organizations.
- Facilities management and ground maintenance services (security, rent, utilities, and building maintenance).
- Procurement and contracting services.
- Financial management and accounting services.
- Information technology services.
- Services to acquire and operate property, plants and equipment.
- Publication, reproduction, and graphics and video services.
- Research, analytical, and statistical services.
- Human resources/personnel services.
- Library and legal services.

To calculate the overhead allocable to a service, the IRS first calculates the Corporate Overhead rate and then multiplies the Corporate Overhead rate by the direct labor and benefits costs determined as discussed above. The IRS calculates the Corporate Overhead rate annually based on cost elements underlying the Statement of Net Cost included in the IRS Annual Financial Statements, which are audited by the Government Accountability Office. The Corporate Overhead rate is the ratio of the sum of the IRS's indirect labor and benefits costs from the supporting and sustaining organizational units—those that do not interact directly with taxpayers—and all non-labor costs to the IRS's labor and benefits costs of its organizational units that interact directly with taxpayers.

The Corporate Overhead rate of 65.85 percent for costs reviewed during FY 2015 was calculated based on FY 2014 costs as follows:

Indirect Labor and Benefits Costs		$1,693,339,843
Non-Labor Costs	+	$2,832,262,970
Total Indirect Costs		$4,525,602,813
Direct Labor and Benefits Costs	÷	$6,872,934,473
Corporate Overhead Rate		65.85%

E. Calculation of Offer in Compromise User Fee

The IRS used data from cost centers dedicated to the offer in compromise program and cost centers that work on the offer in compromise program, as well as other IRS programs, to determine the full cost of the offer in compromise program. The IRS used the most recent two years of data, in this case FY 2013 and FY 2014, and averaged those costs in order to assure anomalies, such as short term increases or decreases in costs or numbers of offers in compromise, would not artificially impact the measured costs.

The offer in compromise program work is primarily performed by dedicated offices; therefore, the cost of most of the program can be determined through the costs recorded in the cost centers underlying the offices dedicated to the offer in compromise program. The IRS identified the offices that provide 100 percent of their time to this program (Offer in Compromise Offices), determined the full costs of the Offer in Compromise Offices for FY 2013 and 2014, and averaged the costs for those two years to determine the annual average costs of those offices. The average costs for the Offer in Compromise Offices were as follows:

Offer in compromise offices	Average costs
Labor and Benefits	$61,125,895
Non-Labor and Support Costs	90,730,487
Offer in Compromise Offices Full Cost.	151,856,382

Because overhead and support costs are already included in the ''Non-Labor and Support Costs'' allocated to these cost centers, a Corporate Overhead factor has not been added to determine the full cost of the Offer in Compromise Offices.

There are three IRS organizations that perform work for the offer in compromise program, but that are not exclusively dedicated to the offer in compromise program (Non-OIC Dedicated Offices). Those organizations are:

- Office of Chief Counsel
- Small Business/Self-Employed (Examination)
- Office of Appeals

To calculate the average offer in compromise program costs attributable to these Non-OIC Dedicated Offices, the IRS obtained the time spent by each organization on the offer in compromise program for FY 2013 and 2014, calculated an annual average of that time for each office, and multiplied that annual average time by the average hourly rates for that organization. After determining the total labor and benefits

costs for the Non-OIC Dedicated Offices, the IRS added the Corporate Overhead costs allocable to these organizations to determine the full cost of the services provided by the Non-OIC Dedicated Offices. The costs are calculated as follows:

NON-OIC DEDICATED OFFICES

Office of Chief Counsel	
Average Hours	13,688
Average Salary and Benefits Rate	$57.00
Chief Counsel Labor Cost	$780,216
Examination	
Average Hours	3,723
Average Salary and Benefits Rate	$52.72
Examination Labor Cost	$196,277
Office of Appeals	
Average Hours	128,610
Average Salary and Benefits Rate	$55.10
Examination Labor Cost	$7,086,411
Total Cost for Chief Counsel, Examination and Appeals	
Total Labor and Benefits Cost	$8,062,904
Corporate Overhead at 65.85%	$5,309,422
Total Non-OIC Dedicated Offices Cost	$13,372,326

To determine the full cost of the offer in compromise program, the IRS combined the Offer in Compromise Offices' full cost and the Non-OIC Dedicated Offices' full cost. The IRS calculated the unit cost by dividing the total offer in compromise program cost by the average of offer in compromise cases that were closed in FY 2013 and in FY 2014. Closed offers are offers that have been issued an acceptance letter, closed as rejected or withdrawn/terminated, or returned. An offer may be returned either because the offer was not processable when received, or after the offer was initially determined to be processable circumstances occur that cause the offer to no longer be processable or the Service is unable to proceed with the offer investigation. The IRS closed 70,622 offer in compromise cases in FY 2013 and 64,332 offer in compromise cases in FY 2014, for an average of offer in compromise cases closed in FY 2013 and FY 2014 of 67,477.

UNIT COST FOR OFFER IN COMPROMISE

Total Offer in Compromise Offices	$151,856,382
Total Non-OIC Dedicated Offices	$13,372,326
Offer in Compromise Program Full Cost	$165,228,708
Average FY 2013 and 2014 Annual Volume of Closed Offers in Compromise	67,477
Unit Cost	$2,450

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. The dollar amount of the fee is not, however, substantial enough to have a significant economic impact on any entity subject to the fee because generally the fee is applied to offset an existing tax obligation that the entity owes the IRS. As such, the fee does not represent a payment of any amount greater than what a substantial number of entities owe the IRS. Low-income taxpayers and taxpayers making offers in compromise based on doubt as to liability will continue not to be charged a fee and therefore will not be impacted economically by these proposed regulations. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be available at *www.regulations.gov* or upon request.

A public hearing has been scheduled for December 16, 2016, beginning at 10:00 a.m. in the Main IR Auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo

identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments or electronic comments by November 28, 2016 and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and 8 copies) by November 28, 2016 . A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Maria Del Pilar Austin of the Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300—USER FEES

■ **Paragraph. 1.** The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701 * * *

■ **Par 2.** In § 300.3, paragraphs (b)(1) introductory text and (d) are revised to read as follows:

§ 300.3 Offer to compromise fee.

* * * * *

(b) *Fee*—(1) The fee for processing an offer to compromise submitted before February 27, 2017, is $186. The fee for processing an offer to compromise submitted on or after February 27, 2017, is $300. No fee will be charged if an offer is—* * *

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning February 27, 2017.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–24666 Filed 10–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151006928–6899–01]

RIN 0648–BF43

Fisheries of the Northeastern United States; Jonah Crab Fishery; Advance Notice of Proposed Rulemaking and Notice of Intent To Prepare an Environmental Impact Statement; Scoping Process

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: Based on Atlantic States Marine Fisheries Commission recommendations, we are issuing this advance notice of proposed rulemaking announcing our intent to develop regulations in support of an Interstate Fishery Management Plan for Jonah crab. The advance notice of proposed rulemaking is necessary to provide the public with background information and to alert interested parties of future regulations governing Jonah crab fishing in Federal waters of the Exclusive Economic Zone. We are also announcing our intent to prepare an Environmental Impact Statement in accordance with the National Environmental Policy Act. This notice is to alert the interested public of the scoping process and potential development of a draft Environmental Impact Statement, and to outline opportunity for public participation in that process.

DATES: Written and electronic comments must be received on or before November 14, 2016.

ADDRESSES: You may submit comments on the Jonah Crab Plan, identified by NOAA–NMFS–2015–0127, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. *Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0127,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Jonah Crab Plan.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Requests for copies of the Commission's Jonah Crab Plan should be directed to Robert Beal, Executive Director, Atlantic States Marine Fisheries Commission, 1050 N. Highland St, Suite A–N, Arlington, VA 22201. It is also available electronically at: *http://www.asmfc.org/uploads/file/55e9daffJonahCrabInterstateFMP_Aug2015.pdf.*

Requests for copies of the scoping document and other information should be directed to Allison Murphy, Fishery Policy Analyst, NOAA Fisheries, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930, telephone (978) 281–9122. The scoping document will be available electronically at: *http://www.greateratlantic.fisheries.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, NMFS, *allison.murphy@noaa.gov,* telephone (978) 281–9122.

SUPPLEMENTARY INFORMATION:

Background

Jonah crab (*Cancer borealis*), also known as rock crab, is not currently managed under Federal regulations. The Atlantic States Marine Fisheries Commission's Lobster Board, working through its public meeting process, approved an Interstate Fishery Management Plan for Jonah Crab in August 2015. The goal of the plan is to promote conservation, reduce the possibility of recruitment failure, and allow the industry to continue fishing

the resource at present levels. The Commission's Jonah Crab Plan includes commercial and recreational measures, and reporting requirements, summarized in Table 1, below.

TABLE 1—COMMISSION-RECOMMENDED JONAH CRAB MANAGEMENT MEASURES

	Description
Commercial Management Measure	
Permits	Limits participation in the directed trap fishery to only those vessels and permit holders that already hold a lobster permit, or can prove prior participation in the crab fishery before the June 2, 2015, control date.
Minimum Size	4¾ inches (12.065 cm).
Landing Disposition	Whole crab fishery, with an exception for New Jersey, Maryland, Delaware, and Virginia harvesters who can demonstrate history in the claw-only fishery.*
Broodstock Protection	Prohibition on the retention of egg-bearing females.
Incidental Catch Limit	1,000 crabs/trip for non-lobster trap and non-trap gear.
Recreational Management Measures	
Possession Limit	50 whole crabs/person per day.
Broodstock Protection	Prohibition on the retention of egg-bearing females.
Reporting Requirements	
Dealer Reporting	100-percent dealer reporting.
Harvester Reporting	100-percent harvester reporting, but allows jurisdictions that currently require less than 100 percent of lobster harvesters to report are required to maintain its current reporting programs and extend them to Jonah crab.

*The Commission is considering a coastwide claw-only fishery as part of Addendum II.

Anticipating that the approved Jonah Crab Plan would include permitting requirements, the Commission requested that we issue a control date for the Jonah crab fishery. We published a notice (80 FR 31347; June 2, 2015) establishing June 2, 2015, as the control date. The notice advised Jonah crab harvesters to locate and preserve records. It also notified harvesters that landings after the control date may not be treated the same as landings that occurred prior to the control date.

The Board recommended allowing any lobster permit holder to continue to fish for and retain Jonah crabs. The Board also recommended allowing access for historic crab-only harvesters to continue to fish for and retain Jonah crabs. The Board has not yet developed qualification criteria for historic crab-only harvesters in the Jonah Crab Plan. While the Board's Plan Development Team has investigated Jonah crab-only landings, it has not been able to investigate Jonah crab-only harvesters with substantial landings. We will work with the Commission and state partners through the development of these recommendations.

In the Jonah Crab FMP, the Lobster Board recommended an incidental catch limit of 200 crabs/day, up to 500 crabs/trip. After the FMP was approved, the Board became aware that the approved limit might restrict some historical fishing practices, which was not intended. In November 2015, the Board initiated Addendum I to reconsider the incidental catch limit. At its May 2016 meeting, the Lobster Board finalized Addendum I by selecting an incidental catch limit of 1,000 crabs for a trip of any length for both non-trap and non-lobster trap gear.

In May 2016, the Lobster Board initiated Addendum II to further develop claw-only fishery requirements. Although draft Addendum II has not yet been released for public comment, we expect it to contain alternatives that would allow a coastwide claw-only fishery, as well as an alternative that would restrict Jonah crab landings to only whole crabs (*i.e.,* prohibit landing claws). We expect the draft addendum to be discussed in October 2016, and revised claw-only fishery requirements to be selected by the Lobster Board in February 2017, following public comment.

States were required to implement Jonah Crab Plan requirements by June 1, 2016. In September, 2015, the Commission formally requested that we issue complementary regulations in Federal waters. We are reviewing the Commission's Jonah Crab Plan, available data, and are considering implementing complementary measures in Federal waters. We are seeking public comment on the Commission's recommended measures, as well as soliciting input on any additional alternatives that we should consider for managing the Federal Jonah crab fishery.

Public Comment

We are soliciting written comments to help us determine the scope of issues to be addressed by potential Federal regulations in support of the Jonah Crab Plan, as well as to identify significant issues for inclusion in the Environmental Impact Statement. We are particularly interested in comment on the Commission's recommended measures outlined in Table 1, including potential criterial for a possible limited access directed fishery. We are also interested in comment on the nature and extent of a possible claw-only fishery which may be revised in Addendum II. Scoping consists of identifying the range of actions, alternatives, and impacts to be considered. After the scoping process is completed, we will begin development of Federal regulations and may prepare an Environmental Impact Statement to analyze the impacts of the range of alternatives under consideration. Impacts may be direct, indirect, or cumulative.

In addition to having the opportunity to comment on this notice, the public will have the opportunity to comment on the measures and alternatives being considered through the public comment period and a public meeting, consistent with National Environmental Policy Act and the Administrative Procedure Act.

We have scheduled a scoping webinar for October 20, 2016 at 5:00 p.m. during which we will take and discuss scoping comments on future Jonah crab regulations. Please use the link and call in information provided below:

- Webinar: *https://noaaevents.webex.com/noaaevents/onstage/g.php?MTID=ed272b501b73da9f75dff6eb36ca49229,*
- Webinar access code: Meeting123,
- Telephone Number: 877–661–2084,
- Participant Code: 613780.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 6, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–24746 Filed 10–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 160728670–6904–01]

RIN 0648–BG23

Fisheries off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Protected Species Hard Caps for the California/Oregon Large-Mesh Drift Gillnet Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing regulations under the authority of Section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement an immediate closure of the California thresher shark/swordfish drift gillnet (DGN) (mesh size ≥14 inches) fishery if a hard cap (*i.e.,* limit) on mortality/injury is met or exceeded for certain protected species during a rolling 2-year period. The length of the closure would be dependent on when—during the 2-year period—the hard cap is reached.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by November 28, 2016.

ADDRESSES: You may submit comments on this document, the draft Environmental Assessment (EA), draft Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), identified by NOAA–NMFS–2016–0123, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0123,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Lyle Enriquez, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2016–0123'' in the comments.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the draft EA, draft RIR, IRFA, and other supporting documents are available via the Federal eRulemaking Portal: *http://www.regulations.gov,* docket NOAA–NMFS–2016–0123 or by contacting the Regional Administrator, Barry Thom, NMFS West Coast Region, 1201 NE. Lloyd Blvd., Portland, OR 97232–2182, or *RegionalAdministrator.WCRHMS@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Lyle Enriquez, NMFS, West Coast Region, 562–980–4025, or *Lyle.Enriquez@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The DGN fishery for swordfish and thresher shark (14″ minimum mesh size) is federally managed under the Federal Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) and via regulations of the states of California and Oregon to conserve target and non-target stocks, including protected species that are incidentally captured. The HMS FMP was prepared by the Pacific Fishery Management Council (Council) and is implemented under the authority of the MSA by regulations at 50 CFR part 660.

The DGN fishery has been subject to a number of seasonal closures. Since 1982, it has been closed inside the entire U.S. West Coast exclusive economic zone (EEZ) from February 1 to April 30 of each year. In 1986, a closure was established within 75 miles of the California mainland from June 1 through Aug 14 of each year to conserve common thresher sharks; this closure was extended to include May in 1990 and later years. In 2001, NMFS implemented two Pacific sea turtle conservation areas on the U.S. West Coast with seasonal DGN restrictions to protect endangered leatherback and loggerhead sea turtles. The larger of the two closures spans the EEZ north of Point Conception, CA (34°27′ N. latitude) to mid-Oregon (45° N. latitude) and west to 129° W. longitude. DGN fishing is prohibited annually within this conservation area from August 15 to November 15 to protect leatherback sea turtles. A smaller closure was implemented to protect Pacific loggerhead turtles from DGN gear from June 1–August 31 of each year during a forecasted or occurring El Niño event, and is located south of Point Conception, CA, and east of 120° W. longitude (72 FR 31756). The number of active vessels in the DGN fishery has remained under 50 vessels since 2003, and there has been an average of 20 active vessels per year from 2010 through 2015.

Since 1990, NMFS has targeted 20 percent observer coverage of the DGN fishery each year, per recommendations from the Southwest Fisheries Science Center (NMFS 1989). NMFS' fleet-wide observer coverage target has been 30 percent since 2013. Since some DGN vessels are unobservable due to safety or accommodations requirements, the observable vessels are observed at a rate higher than 30 percent to attain the fleet-wide 30 percent coverage. Four to six DGN vessels have been unobservable during each fishing season from 2011 to present.

Council Background

In March 2012, the Council tasked NMFS with determining the steps needed to implement protected species hard caps in the DGN fishery. Originally concerned with sea turtle interactions, the Council expanded its scope to include marine mammals at its June 2014 meeting. At that meeting, the Council directed its Highly Migratory Species Management Team (HMSMT) to begin developing a range of alternatives

to establish hard caps on high-priority protected species (*i.e.* sea turtles and marine mammals) incidentally caught in the DGN fishery. In September 2014, the Council selected a Range of Alternatives and Preliminary Preferred Alternative (PPA); however, the HMSMT identified implementation issues with the Council's PPA, and an additional PPA, identified as the California Department of Fish and Wildlife (CDFW) PPA, was selected in March 2015. In June, the Council added a 2-year hard cap sub-option to the Council hard cap PPA and the CDFW hard cap PPA, and an additional alternative that modified the CDFW PPA was added in September 2015. This alternative contained 2-year rolling hard caps based on observed mortality/injury; the Council selected this alternative as its Final Preferred Alternative (FPA).

Proposed Regulations for Hard Cap Limits

The implementation of hard caps is intended to manage the fishery under the MSA to protect certain non-target species. Its purpose is not to manage marine mammal or endangered species populations, but rather to enhance the provisions of ESA and the MMPA under MSA Section 303(b)(12) and National Standard 9. This proposed rule would implement the Council's FPA, which would establish 2-year rolling hard caps on observed mortality and injury to fin, humpback, and sperm whales, leatherback, loggerhead, olive ridley, and green sea turtles, short-fin pilot whales, and bottlenose dolphins in the DGN fishery. The definition of injury is taken from the NMFS West Coast Region Observer Program field manual. Observers record protected species released as Alive, Injured, or Dead. Observer program staff reviews observer data forms and notes to make a final determination of the condition of entangled protected species. To determine whether a hard cap has been reached, NMFS would count observed mortalities and injuries to these species during the current DGN fishing season (May 1 through January 31) and the previous fishing season. If a cap were reached, the DGN fishery would close until the 2-year (*i.e.* two fishing seasons) mortality and injury for all species is below their hard cap value. The DGN fishery would then re-open on May 1 of the subsequent fishing season. The Council recommended hard cap values for when the DGN observer coverage level is less than 75 percent; the Council will revisit hard cap values when observer coverage becomes greater than 75 percent.

TABLE 1—PROPOSED PROTECTED SPECIES HARD CAPS FOR DRIFT GILLNET FISHERY

Species	Rolling 2-year hard cap
Fin Whale	2
Humpback Whale	2
Sperm Whale	2
Leatherback Sea Turtle	2
Loggerhead Sea Turtle	2
Olive Ridley Sea Turtle	2
Green Sea Turtle	2
Short-fin Pilot Whale (CA/OR/WA stock)	4
Bottlenose Dolphin (CA/OR/WA stock)	4

Fishery Closure Procedures

NMFS will report observed protected species mortalities and injuries to help participants in the DGN fishery plan for the possibility of a hard cap being reached. If, as determined by NMFS, the DGN fleet meets or exceeds a hard cap during a rolling 2-year period, the fishery will be closed. NMFS will publish a notice in the **Federal Register** announcing the specified beginning and end dates of the closure. Upon the effective date identified in the **Federal Register** Notice, a DGN vessel may not be used to target, retain on board, transship, or land any additional fish using DGN gear in the U.S. West Coast EEZ during the period specified in the announcement. Any fish already on board a DGN fishing vessel on the effective date may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, if they are landed within 4 days after the effective date. NMFS will notify vessel owners/operators of the closure by Vessel Monitoring System communication to the fleet stating when large-mesh drift gillnet fishing is closed. Notification will also be made by postal mail and a posting on the NMFS regional Web site.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS West Coast Regional Administrator has determined that this proposed rule is consistent with the HMS FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

There are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act (PRA), and existing collection-of-information requirements still apply under the following Control Numbers: 0648–0593. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid Office of Management and Budget control number.

NMFS prepared a draft EA for the proposed regulations that discusses the impact on the environment as a result of this rule. The proposed action will have minor beneficial environmental impacts on target, not-target, and protected species and negative economic impacts to the DGN fleet. All of the proposed alternatives would result in a negative economic impact; however, the Council's FPA would result in a limited economic impact when compared to the other alternatives (a more detailed explanation can be found in the IRFA). A copy of the draft EA is available from NMFS (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. Id. at 81194.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

There are currently 73 individual permit holders with valid California Department of Fish and Wildlife drift gillnet permits; however, many permits remain inactive. On average, 20 vessels

participated in the fishery each year from 2010 through 2015. In 2015, 18 vessels participated in the fishery with total landings equaling 96 metric tons (mt) (round weight), about 5.3 mt on average per vessel. Total landings included 18 mt of common thresher shark, 6 mt of shortfin mako shark, 66 mt of swordfish, and 5 mt of tunas. All participants in the fishery are considered small businesses since average annual per vessel revenues persist well below the $11 million threshold.

The Council considered six alternatives for protected species hard caps for the DGN fishery before selecting Alternative 6 as their FPA. Compared to the baseline, the proposed regulatory action (*i.e.,* based on Alternative 6) would result in a $4,596 annual loss per vessel based on a DGN fleet size of 20 vessels. These potential adverse economic effects of the proposed regulations appear to be limited. DGN effort is variable over the course of a fishing season, as vessels may choose to fish for salmon, albacore, and other marketable species based on abundance and environmental conditions, which may mitigate some of the anticipated economic losses. If vessel operators are successful in reducing the frequency of hard cap species catch in the future, the DGN fishery would close less often. However, given the many existing regulatory measures to reduce protected species interactions in the DGN fishery to minimal levels, the degree to which further take reductions can be realized through fishermen's deliberate effort to avoid reaching caps cannot be determined.

Action Alternatives 1 through 4 were estimated to produce fewer costs to the fleet than the FPA; however, these alternatives presented significant implementation challenges. The evaluation of the fishery against hard caps in each of these Alternatives was based on an estimated mortality and serious injury (M&SI) calculation derived from observer coverage levels. The current NMFS process under the MMPA for making M&SI determinations is an extensive and multi-step process that takes months to complete and occurs at the end of each calendar year. It was deemed that this process, therefore, would not be responsive enough to inseason interactions with protected species. NMFS would have to create an expedited M&SI assessment process to make a more timely determination, which would have further delayed this action. Additionally, observer coverage rates for the DGN fishery vary between and within fishing seasons. This makes it difficult to determine the coverage rate at the time an interaction occurs and then extrapolate observed M&SI for comparison to the hard caps. Similarly, using a generalized observer coverage rate is problematic because DGN vessels often participate in multiple fisheries based on environmental factors and the presence of different species. This adds to the variation in observer coverage levels over the course of a fishing season. Lastly, because fishing effort has been low compared to historical levels, a small change in observed fishing effort can have a potentially big effect on the observer coverage rate if unobserved effort does not change commensurately.

In response to the identified implementation issues with Alternatives 1 through 4, the CDFW proposed Alternative 5 with two sub-Alternatives. Based on Alternative 5 sub-option 1, the DGN fishery would be expected to meet or exceed a hard cap seven out of thirteen fishing seasons, using historical observations (there is, however, less fishing effort in recent years, so the fishery would be expected to close fewer than seven times under this Alternative). Using Alternative 5 sub-option 2, the fishery would be expected to close in 14.6 percent of simulated seasons, with the possibility of closing for more than one full fishing season. While Alternative 5 would produce greater beneficial effects to target, non-target, and protected species than the other alternatives, the results of the economic analysis indicate that it would have the greatest economic impact and not be conducive to supporting an economically viable swordfish fishery. The Council's FPA, Alternative 6, is the least costly alternative of those that did not present significant implementation issues.

NMFS considers all entities subject to this action to be small entities as defined NMFS' size standards. The small entities that would be affected by the proposed action are all U.S. commercial DGN vessels that may be used in the California/Oregon large-mesh DGN fishery. Because each affected vessel is a small business, the proposed rule has an equal effect on all of these small entities. Therefore, the proposed action will impact all these small entities in the same manner. This rulemaking is not anticipated to have a significant economic impact on a substantial number of small entities, or place small entities at a disadvantage to large entities.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting, and recordkeeping requirements.

Dated: October 6, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.702, add the definition for ''Injury'' in alphabetical order to read as follows:

§ 660.702 Definitions.

* * * * *

Injury, when referring to marine mammals and sea turtles, means the animal has been released with obvious physical injury or with attached fishing gear.

* * * * *

■ 3. In § 660.705, add paragraphs (tt) and (uu) to read as follows:

§ 660.705 Prohibitions.

* * * * *

(tt) Fish with a large-mesh drift gillnet (mesh size ≥14 inches) in the U.S. West Coast Exclusive Economic Zone during the time the fishery is closed pursuant to § 660.713(h)(2)(ii).

(uu) Retain on board, transship, or land any fish caught with a large-mesh drift gillnet (mesh size ≥14 inches) later than 4 days after the effective date of a drift gillnet fishery closure and before the drift gillnet fishery re-opens pursuant to § 660.713(h)(2)(ii).

■ 4. In § 660.713, add paragraph (h) to read as follows:

§ 660.713 Drift gillnet fishery.

* * * * *

(h) Limits on protected species mortalities and injuries.

(1) Maximum 2-year hard caps are established on the number of sea turtle and marine mammal mortalities and injuries that occur as a result of observed interactions with large-mesh drift gillnets (mesh size ≥14 inches) deployed by vessels registered for use under HMS permits. Mortalities and injuries during the current fishing season (May 1 through January 31) and the previous fishing season are counted towards the hard caps. The mortality and injury hard caps are as follows:

Species	Rolling 2-year hard cap
Fin Whale	2
Humpback Whale	2
Sperm Whale	2
Leatherback Sea Turtle	2
Loggerhead Sea Turtle	2
Olive Ridley Sea Turtle	2
Green Sea Turtle	2
Short-fin Pilot Whale (CA/OR/WA stock)	4
Bottlenose Dolphin (CA/OR/WA stock)	4

(2) Upon determination by the Regional Administrator that, based on data from NMFS observers or a NMFS Electronic Monitoring program, the fishery has reached any of the protected species hard caps during a given 2-year period:

(i) As soon as practicable, the Regional Administrator will file for publication at the Office of the Federal Register a notification that the fishery has reached a protected species hard cap. The notification will include an advisement that the large-mesh drift gillnet (mesh size ≥14 inches) fishery shall be closed, and that drift gillnet fishing in the U.S. West Coast Exclusive Economic Zone by vessels registered for use under HMS permits will be prohibited beginning at a specified date and ending at a specified date. Drift gillnet fishing will then be allowed beginning May 1 of the year when observed mortality and injury of each species during the previous May 1 through January 31 fishing season is below its hard cap value. Coincidental with the filing of the notification, the Regional Administrator will also provide actual notice that the large-mesh drift gillnet (mesh size ≥14 inches) fishery shall be closed, and that drift gillnet fishing in the U.S. West Coast Exclusive Economic Zone by vessels registered for use under HMS permits will be prohibited beginning at a specified date, to all holders of HMS permits with a drift gillnet endorsement via VMS communication, postal mail, and a posting on the NMFS regional Web site.

(ii) Beginning on the fishery closure date published in the **Federal Register** and indicated by the Regional Administrator in the notification provided to vessel operators and permit holders under paragraph (h)(2)(i) of this section, and until the specified ending date, the large-mesh drift gillnet (mesh size ≥14 inches) fishery shall be closed. During the closure period commercial fishing vessels registered for use under HMS permits may not be used to target, retain on board, transship, or land fish captured with a large-mesh drift gillnet (mesh size ≥14 inches), with the exception that any fish already on board a fishing vessel on the effective date of the notice may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided such fish are landed within 4 days after the effective date published in the fishing closure notice.

[FR Doc. 2016–24780 Filed 10–12–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 198
Thursday, October 13, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

Submission for OMB Review; Comment Request

October 7, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 14, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Industry Response to Noncompliance Records.

OMB Control Number: 0583–0146.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031). These statues mandate that FSIS protect the public by verifying that meat and, poultry products are safe, wholesome, not adulterated, and properly labeled and packaged. If FSIS in-plant personnel discover noncompliance with regulatory requirements they issue Noncompliance Records (NRs). The Noncompliance Record, FSIS Form 5400–4 and FSIS 5400–4 FISH, serves as FSIS' official record of noncompliance with one or more regulatory requirements.

Need and use of the Information: FSIS will use the form 5400–4 and 5400–4 FISH to document their findings and provided written notification of the establishment's failure to comply with regulatory requirement(s). The establishment management receives a copy of the form and has the opportunity to respond in writing using the Noncompliance Record form.

Description of Respondents: Business or other for-profit.

Number of Respondents: 7,057.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 119,969.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–24733 Filed 10–12–16; 8:45 am]

BILLING CODE 3410–DM–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a Business Meeting of the U.S. Commission on Civil Rights will be convened at 10 a.m. on Friday, October 21, 2016.

DATES: Friday, October 21, 2016, at 10 a.m. EST.

ADDRESSES: National Place Building, 1331 Pennsylvania Ave. NW., 11th Floor, Suite 1150, Washington, DC 20425 (Entrance on F Street NW.).

FOR FURTHER INFORMATION CONTACT: Brian Walch, Director, Communications and Public Engagement. Telephone: (202) 376–8371; TTY: (202) 376–8116; Email: *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This business meeting is open to the public.

Hearing-impaired persons who will attend the briefing and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Meeting Agenda

I. Approval of Agenda.
II. Business Meeting
  A. Program Planning.
  - Discussion of Concept Papers
  - Update on Status of 2017 Statutory Enforcement Report

  B. State Advisory Committees.
  - State Advisory Committee Appointments
  - Pennsylvania
  - District of Columbia
  - Arkansas
  - Colorado

  C. Management and Operations
  - Staff Director's Report

III. Break until 11 a.m. for Presentation by Sylvia Mendez about her experiences as the Plaintiff in Mendez v. Westminster School District
  - Presentation by Sylvia Mendez

IV. Adjourn

Dated: October 11, 2016.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2016–24956 Filed 10–11–16; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of NIST's Mouse Cell Line Authentication Consortium

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of research consortium.

SUMMARY: The National Institute of Standards and Technology (NIST), an agency of the United States Department of Commerce, is establishing the Mouse Cell Line Authentication Consortium and invites organizations to participate in this Consortium. The Consortium will collaborate to obtain concordant short tandem repeat (STR) profiles for mouse cell lines, draft consensus standards for mouse cell line authentication, and create a public database of STR profiles for mouse cell lines. The Consortium has been developed in collaboration with American Type Culture Collection (ATCC). Participation in this Consortium is open to all eligible organizations, as described below.

DATES: NIST will accept responses for participation in this Consortium on an ongoing basis. The Consortium's activities will commence on or about December 15, 2016 (''Commencement Date''). Acceptance of participants into the Consortium after the Commencement Date will depend on eligibility and the availability of testing reagents and other resources.

ADDRESSES: Information in response to this Notice and requests for additional information about the Consortium can be directed via mail to the Consortium Manager, Jamie Almeida, Biosystems and Biomaterials Division of NIST's Material Measurement Laboratory, 100 Bureau Drive, Gaithersburg, Maryland 20899–8312, or via electronic mail to *jamie.almeida@nist.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about participation opportunities or about the terms and conditions of NIST's Cooperative Research and Development Agreement (CRADA), please contact Honeyeh Zube, CRADA and License Officer, National Institute of Standards and Technology's Technology Partnerships Office, by mail to 100 Bureau Drive, Mail Stop 2200, Gaithersburg, Maryland 20899, by electronic mail to *honeyeh.zube@nist.gov*, or by telephone at (301) 975–2209.

SUPPLEMENTARY INFORMATION: The estimated cost due to the use of misidentified and contaminated cell lines used in research exceeds millions of dollars. The authentication of cell lines is recommended by many journals and research funding entities prior to publication and funding, respectively. On June 9, 2015, the National Institute of Health issued a notice titled, ''Enhancing Reproducibility through Rigor and Transparency'' (NOT–OD–15–103) to address the revision of grant application instructions and grant review criteria to highlight the need to authenticate key biological materials, including cell lines. The NIH notice is available here: *http://grants.nih.gov/grants/guide/notice-files/NOT-OD-15-103.html.* Currently, there is a consensus standard in place for human cell line authentication using short tandem repeat (STR) profiling which describes in detail the specific procedures to obtain reliable genotyping results. Databases of human STR profiles and commercial kits for human STR genotyping are also available. For non-human cell line authentication, however, there are no standards, STR genotyping kits, or databases available to researchers.

NIST researchers have developed a panel of STR markers specific to the mouse genus that can be used to discriminate among mouse cell lines. These STR markers are used in a multiplex polymerase chain reaction (PCR) assay and the PCR products are separated based on size using capillary electrophoresis (CE). This technology is the subject of a pending patent application owned by the United Stated Department of Commerce (US Patent Application Number 13/935,285).

The purpose of this Consortium is to draft guidance documents or consensus documentary standards that will delineate the definitive methods for mouse cell line authentication based on the data collected in a concordance study conducted as a part of the Consortium. These efforts will enable quality services to be provided for mouse cell line authentication. The Consortium is managed by NIST in collaboration with ATCC. NIST and ATCC will provide protocol test reagent kit and DNA samples from mouse cell lines to the Consortium members under specific terms and conditions. NIST will provide the Consortium members with a standard operating procedure (SOP) and genotyping kit which each Consortium member will be required to use to generate data for the mouse cell line DNA samples. The Consortium members will determine the parameters for data analysis and define the rules for interpretation of identity guided by the data collected. NIST will collect concordant STR profile data for each mouse cell line which will be used to build a public database for mouse cell lines. NIST will anonymize the data from individual labs. NIST will share summaries of the data for all the mouse cell lines tested. NIST intends to publish the results of the research in the form of reports and publications in scientific journals with the members of the Consortium as co-authors, as appropriate.

Participation Process: Researchers at university core labs, at companies offering cell line authentication methods, at cell line repositories, and at other organizations that would benefit from mouse cell line authentication services, are invited to respond to this Notice to participate in this Consortium. Eligibility will be determined solely by NIST based on the information provided by interested organizations in response to this Notice on a first-come, first-serve basis to the extent that interested organizations are eligible and that testing reagents and other resources are available to accommodate additional participants. In order to be eligible to participate, the Consortium member will be required to have expert experience in STR genotyping, human cell line authentication, and CE operation. Additionally, the Consortium member will need to demonstrate that it has access to a thermal cycler and CE instrumentation, as required to complete the tasks in the SOP. Consortium members will be responsible for their own consumables for PCR and CE fragment analysis, except for the mouse STR kit and mouse cell line DNA, which will be provided by NIST and ATCC. NIST will evaluate the written responses to this Notice to determine eligibility to participate in this Consortium. Organizations responding to this Notice should provide the following information to NIST's Consortium Manager:

(1) A description of the experience in cell line authentication, STR analysis, polymerase chain reaction (PCR), and STR genotyping software analysis. Please also indicate whether the organization offers cell line authentication services. Please also describe the methods and kits typically used by organization, and the number of years of experience of the researchers at the organization who have been doing

this type of work and who would be participating in this Consortium.

(2) *Type of Instruments:* The Consortium will provide STR profile concordance data for mouse cell lines. Please indicate the make and model of the thermal cycler and CE instrument that will be used to collect STR profile data. Also provide the type of polymer and array used for the CE instrument.

(3) *Type of Software:* Please indicate the type of software that will be used to analyze and generate electropherograms from the CE fragment data.

A responding organization may not include any business proprietary information in its response to this request for information. NIST will not treat any information provided in response to this Notice as proprietary information. NIST will notify each organization of its eligibility. All Consortium members will be required to sign the Cooperative Research and Development Agreement (CRADA) with NIST in order to participate in this Consortium. All Consortium members will be bound to the same terms and conditions.

Dated: October 7, 2016.

Kevin Kimball,

Chief of Staff.

[FR Doc. 2016–24768 Filed 10–12–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice To Extend the Public Comment Period for the Draft Environmental Impact Statement and Draft Management Plan for the Proposed Designation of the He'eia National Estuarine Research Reserve in Hawai'i

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notification of extension of public comment period for the Draft Environmental Impact Statement and Draft Management Plan for the proposed designation of the He'eia National Estuarine Research Reserve in Hawai'i.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management (OCM) is issuing this notice to advise the public of a 13-day extension to the public comment period on the Draft Environmental Impact Statement and Draft Management Plan (DEIS/DMP) prepared for the proposed designation of the He'eia National Estuarine Research Reserve in Hawai'i. The initial Notice of Availability was published in the **Federal Register** on September 2, 2016 (81 FR 60676), and established a public comment period from September 2, 2016 through October 17, 2016. NOAA OCM is hereby extending the deadline for submitting public comments on this matter to October 30, 2016. NOAA will consider all relevant comments received by October 30, 2016. The October 6, 2016, date of the associated public hearing described in the September 2, 2016, Notice of Availability remains unchanged.

DATES: NOAA is accepting public comments through 5:00 p.m. (HST), October 30, 2016. NOAA is soliciting the views of interested persons and organizations on the adequacy of the DEIS/DMP. All relevant comments received at the hearing and during the extended public comment period ending 5:00 p.m. (HST), October 30, 2016, will be considered in the preparation of the Final Environmental Impact Statement (FEIS) and Final Management Plan (FMP).

ADDRESSES: Comments may be submitted by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NOS-2016-0114,* click the ''Comment Now!'' icon, complete the required fields and enter or attach your comments.
- *Mail:* Joelle Gore, Stewardship Division, Office for Coastal Management, National Ocean Service, NOAA, 1305 East West Highway, N/ORM2, Room 10622 Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible.

FOR FURTHER INFORMATION CONTACT: Jean Tanimoto, Coastal Management Specialist, Policy, Planning, and Communications Division, Office for Coastal Management at (808) 725–5253 or via email at *jean.tanimoto@noaa.gov.*

Electronic copies of the Draft Environmental Impact Statement and Draft Management Plan may be found on the OCM Web site at *http://coast.noaa.gov/czm/compliance/* or may be obtained upon request from *coastal.info@noaa.gov.*

Dated: October 5, 2016.

Keelin Kuipers,

Division Chief, Policy, Planning and Communication, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

(Federal Domestic Assistance Catalog 11.420, Coastal Zone Management Estuarine Research Reserves)

[FR Doc. 2016–24679 Filed 10–12–16; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE212

Endangered and Threatened Species; Recovery Plans

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NOAA's National Marine Fisheries Service (NMFS) announces the adoption of the Final Endangered Species Act (ESA) Coastal Multispecies Recovery Plan for the California Coastal (CC) Chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU), Northern California (NC) steelhead *(O. mykiss)* Distinct Population Segment (DPS), and Central California Coast (CCC) steelhead *(O. mykiss)* DPS. These species spawn and rear in streams and rivers along the central and northern California coast, and in tributaries to San Francisco Bay.

ADDRESSES: Electronic copies of the Public Final Recovery Plan are available online at: *http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/north_central_california_coast/north_central_california_coast_salmon_recovery_domain.html*. A CD–ROM of these documents can be obtained by emailing a request to *Andrea.Berry@noaa.gov* or by writing to: Recovery Team, National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404.

FOR FURTHER INFORMATION CONTACT: Korie Schaeffer, (707) 575–6087, *Korie.Schaeffer@noaa.gov,* or Erin

Seghesio, (707) 578–8515, *Erin.Seghesio@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*) requires we develop and implement recovery plans for the conservation and survival of threatened and endangered species under our jurisdiction, unless it is determined that such plans would not promote the conservation of the species. The Coastal Multispecies Recovery Plan was developed for: The CC Chinook salmon ESU, and NC and CCC steelhead DPSs. Between 1997 and 2000, NMFS listed the CCC steelhead DPS (62 FR 43937; August 18, 1997), the CC Chinook salmon ESU (64 FR 50394; September 16, 1999), and the NC steelhead DPS (65 FR 36074; June 7, 2000), as threatened under the ESA due to the precipitous and ongoing declines in their populations.

We published a Notice of Availability of the Draft Recovery Plan in the **Federal Register** on October 5, 2015 (80 FR 60125) and held five public meetings to present and receive comments on the Draft Plan. In response to multiple requests, we extended the public comment period for an additional 45 days on December 1, 2015 (80 FR 75066). We received comments on the Draft Plan. We revised the Draft Plan based on the comments received, and this final version now constitutes the Coastal Multispecies Recovery Plan for the CC Chinook salmon ESU, and NC and CCC steelhead DPSs. Our goal is to restore the threatened CC Chinook salmon, and NC and CCC steelhead to the point where they are self-sustaining populations within their ecosystems and no longer need the protections of the ESA.

The Final Recovery Plan

The ESA requires recovery plans incorporate, to the maximum extent practicable: (1) Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goal for the conservation and survival of the species; and (3) estimates of the time required and costs to implement recovery actions.

The Recovery Plan provides background on the natural history, population trends and the potential threats to the viability of CC Chinook salmon, and NC and CCC steelhead. The Recovery Plan lays out a recovery strategy to address conditions and threats based on the best available science and incorporates objective, measurable criteria for recovery. The Recovery Plan is not regulatory, but presents guidance for use by agencies and interested parties to assist in the recovery of CC Chinook salmon, and NC and CCC steelhead. The Recovery Plan identifies actions needed to achieve recovery by improving population and habitat conditions and addressing threats to the species; links management actions to a research and monitoring program intended to fill data gaps and assess effectiveness of actions; and incorporates an adaptive management framework by which management actions and other elements may evolve as we gain information through research and monitoring. To address threats related to the species, the Recovery Plan references many of the significant efforts already underway to restore salmon and steelhead access to high quality habitat and to improve habitat previously degraded.

Recovery of CC Chinook salmon, and NC and CCC steelhead will require a long-term effort in cooperation and coordination with Federal, state, tribal and local government agencies, and the community. Consistent with the Recovery Plan, we will implement relevant actions for which we have authority, work cooperatively on implementation of other actions, and encourage other Federal and state agencies to implement recovery actions for which they have responsibility and authority.

Conclusion

NMFS has reviewed the Recovery Plan for compliance with the requirements of the ESA section 4(f), determined that it does incorporate the required elements and is therefore adopting it as the Final Recovery Plan for the CC Chinook salmon ESU, NC steelhead DPS, and CCC steelhead DPS.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 6, 2016.

Daniel Bess,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–24716 Filed 10–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE946

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Snapper Grouper Advisory Panel (AP) and Information and Education AP. The Snapper Grouper AP will meet to discuss items pertaining to the management of the snapper grouper fishery of the South Atlantic Region. A meeting of the Council's Information and Education AP will follow with the AP addressing outreach efforts and communication needs. See **SUPPLEMENTARY INFORMATION**.

DATES: The Snapper Grouper AP meeting will be held on Monday, October 31, 2016 and Tuesday, November 1, 2016, from 9 a.m. until 5 p.m., each day. The Information and Education AP meeting will be held Wednesday, November 2, 2016, from 8:30 a.m. until 5 p.m. and Thursday, November 3, 2016, from 8:30 a.m. to 3 p.m.

ADDRESSES:

Meeting address: The meetings will be held at the Crowne Plaza Hotel, 4831 Tanger Outlet Blvd., North Charleston, SC 29418.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email*: kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The Snapper Grouper Advisory Panel will receive an update on the status of amendments to the Snapper Grouper Fishery Management Plan (FMP) recently approved by the Council and submitted for Secretarial review, receive an update on Amendment 41, (addressing management of mutton snapper), and the draft For-Hire Electronic Reporting Amendment. In addition, the Panel will review and

provide recommendations on actions proposed for inclusion in Amendment 43 (addressing red snapper), the Vision Blueprint Recreational Amendment, the Vision Blueprint Commercial Amendment, and Amendment 44 (addressing yellowtail snapper allocations). Other discussion items include possible implementation of limited-entry for the for-hire sector; catch history and its association with gear endorsements in the commercial sector; and updates on on-going projects/programs (SEDAR, characterization of the commercial snapper grouper fishery, and Citizen Science).

The Information and Education AP will review and provide recommendations on the Council's Communication's Survey, approaches for the Council's Managed Areas outreach, the upgrade to the Council's Web site, and a possible online forum for stakeholder engagement. Other discussion items include information related to proposed management measures for red snapper and recreational reporting, evaluation of the Council's 2016–20 Snapper Grouper Vision Blueprint, and ideas for improving communication about fishery science and data collection.

Special Accommodations

The meetings are accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 6, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–24677 Filed 10–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0649–XE951

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting via webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a Post Council Meeting Briefing for the public via webinar.

DATES: The meeting will convene on Wednesday, October 26, 2016; starting at 6 p.m. EDT and ending no later than 9 p.m. EDT.

ADDRESSES: The meeting will take place via webinar at: *https://attendee.gotowebinar.com/register/3042382036761235202.*

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Emily Muehlstein, Fisheries Outreach Specialist, Gulf of Mexico Fishery Management Council; *emily.muehlstein@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Agenda

1. Welcome and Introductions
2. Review of Council actions taken during the October, 2016 Council Meeting
3. Questions and Answers
4. Adjourn

You may register for the Post October Council Meeting Briefing Webinar at: *https://attendee.gotowebinar.com/register/3042382036761235202.*

After registering, you will receive a confirmation email containing information about joining the webinar.

Dated: October 6, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–24712 Filed 10–12–16; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings Notice

TIME AND DATE: Wednesday, October 19, 2016, 9:30 a.m.–11:30 a.m. and 1:30 p.m.–3:30 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters To Be Considered

Decisional Matter: Fiscal Year 2017 Operating Plan (9:30 a.m.–11:30 a.m.)

Briefing Matter: Portable Generators—Notice of Proposed Rulemaking (1:30 p.m.–3:30 p.m.)

A live webcast of the Meeting can be viewed at *www.cpsc.gov/live.*

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 11, 2016.

Todd A. Stevenson,

Secretary.

[FR Doc. 2016–24941 Filed 10–11–16; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant Exclusive Patent License to Corrosion Technical Products; Perth, Western Australia

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: In compliance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), the Department of the Army hereby gives notice of its intent to grant to Corrosion Technical Products; a corporation having its principle place of business at 4/44 Vinnicombe Drive, Canningvale, Perth, Western Australia 6155, exclusive license in all fields. The proposed license would be relative to the following: U.S. Patent Number 8,920,714 entitled ''Corrosion Inhibiting Self-Expanding Foam'', Inventor Kelley, Issue Date December 30, 2014.

DATES: The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the U.S. Army Research Laboratory receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by the U.S. Army Research Laboratory within fifteen (15) days from the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Send written objections to U.S. Army Research Laboratory Technology Transfer and Outreach Office, RDRL–DPT/Thomas Mulkern, Building 321, Room 110, Aberdeen Proving Ground, MD 21005–5425.

FOR FURTHER INFORMATION CONTACT: Thomas Mulkern, (410) 278–0889, E-Mail: *ORTA@arl.army.mil.*

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–24748 Filed 10–12–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11:00 a.m. to 12:00 p.m. on December 5, 2016, will include discussions of new and pending administrative/minor disciplinary infractions and non-judicial punishment proceedings involving midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade; the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on December 5, 2016, from 8:30 a.m. to 11:00 a.m. The executive session held from 11:00 a.m. to 12:00 p.m. will be the closed portion of the meeting.

ADDRESSES: The meeting will be held at the U.S. Naval Academy, Annapolis, MD. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Eric Madonia, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11:00 a.m. to 12:00 p.m. on December 5, 2016, will consist of discussions of new and pending administrative/minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy to include but not limited to, individual honor/conduct violations within the Brigade. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Department of the Navy/Assistant for Administration has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11:00 a.m. to 12:00 p.m. will be concerned with matters protected under sections 552b(c)(5), (6), and (7) of title 5, United States Code.

(Authority: 5 U.S.C. 552b)

Dated: October 6, 2016.

C. Mora,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–24740 Filed 10–12–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–430]

Application to Export Electric Energy; Calpine Energy Services, L.P.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Calpine Energy Services, L.P. (Applicant or CES) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before November 14, 2016.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On September 27, 2016, DOE received an application from CES for authority to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities.

In its application, CES states that it does not own or control any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that CES proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential Permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

PROCEDURAL MATTERS: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning CES's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–430. An additional copy is to be provided to both Sarah G. Novosel, Calpine Corporation, 875 15th Street NW., Suite 700, Washington, DC 20005, and Neil L. Levy, KING & SPALDING LLP, 1700 Pennsylvania Ave. NW., Washington, DC 20006.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/*

node/11845, or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on October 4, 2016.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–24757 Filed 10–12–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14471–001]

West Street Hydro, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14471–001.

c. *Date Filed:* March 25, 2015.

d. *Submitted By:* West Street Hydro, Inc.

e. *Name of Project:* Ashuelot River Dam Hydroelectric Project.

f. *Location:* On the Ashuelot River, in Cheshire County, New Hampshire. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. Potential *Applicant Contact:* Mr. Kenneth A. Stewart, West Street Hydro, Inc., 20 Central Square, Keene, NH 03431; phone: (603) 352–2448.

i. *FERC Contact:* Michael Watts at (202) 502–6123; or email at *michael.watts@ferc.gov.*

j. West Street Hydro, Inc., (West Street Hydro) filed its request to use the Traditional Licensing Process on March 25, 2015. West Street Hydro provided public notice of its request on April 2, 2015. In a letter issued on May 13, 2015, the Director of the Division of Hydropower Licensing approved West Street Hydro's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New Hampshire State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. West Street Hydro filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

n. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24730 Filed 10–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2708–000]

Exelon West Medway II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Exelon West Medway II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 25, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–24763 Filed 10–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–21–000]

Elevation Energy Group, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Elevation Energy Group, LLC's application for market-based rate authority, with an

accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 25, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–24767 Filed 10–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3063–020]

Blackstone Hydro Associates; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 3063–020.

c. *Date Filed:* July 29, 2016.

d. *Submitted By:* Blackstone Hydro Associates.

e. *Name of Project:* Central Falls Hydroelectric Project.

f. *Location:* On the Blackstone River, in Providence County, Rhode Island. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. Potential *Applicant Contact:* Simeon Bruner, Blackstone Hydro Associates, 130 Prospect Street, Cambridge, MA 02139; phone: (617) 492–8400.

i. *FERC Contact:* Michael Watts at (202) 502–6123; or email at *michael.watts@ferc.gov.*

j. Blackstone Hydro Associates (Blackstone Hydro) filed its request to use the Traditional Licensing Process on July 29, 2016. Blackstone Hydro provided public notice of its request on August 3, 2016. In a letter issued on September 15, 2016, the Director of the Division of Hydropower Licensing approved Blackstone Hydro's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Rhode Island State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Blackstone Hydro filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

n. The licensee states its unequivocal intent to submit an application for a new license for Project No. 3063. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2019.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24729 Filed 10–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16–17–000]

Commission Information Collection Activities (FERC–551); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–551, Reporting of Flow Volume and Capacity by Interstate Natural Gas Pipelines.

DATES: Comments on the collection of information are due December 12, 2016.

ADDRESSES: You may submit comments (identified by Docket No. IC16–17–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Please reference the FERC–551 in your comments.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–551, Reporting of Flow Volume and Capacity by Interstate Natural Gas Pipelines.

OMB Control No.: 1902–0243.

Type of Request: Three-year extension of the FERC–551 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission has a statutory requirement to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers. FERC–551 uses the information provided by pipelines as part of its overall implementation of the statutory provisions of sections 23(a)(1) of the Natural Gas Act, 16 U.S.C. 717t–2(a)(1); Section 316 of EPAct 2005; section 23 to the Natural Gas Act; section 1281 of EPAct 2005 and section 220 to the Federal Power Act. More specifically, the Commission uses the pipelines' FERC–551 postings as part of fulfilling the transparency provisions of section 23(a)(1) of the Natural Gas Act as mandated by Congress. FERC relies is part on section 23(a)(1) of the Natural Gas Act, for authority to collect this information. The data requirements for pipelines are in listed the Code of Federal Regulations (CFR) under 18 CFR part 284.13, reporting requirements for interstate pipelines. The Commission has directed the data requirements under FERC–551 are to be posted on interstate pipelines' Web sites and not filed on formatted/printed forms.

FERC is obligated to prescribe rules for the collection and dissemination of information regarding the wholesale, interstate markets for natural gas and electricity. The Commission is authorized to adopt rules to assure the timely dissemination of information about the availability and prices of natural gas and natural gas transportation and electric energy and transmission service in such markets.

The posting requirements are based on the Commission's authority under section 23 of the NGA (as added by Energy Policy Act of 2005, EPAct 2005), which directs the Commission, in relevant part, to obtain and disseminate ''information about the availability and prices of natural gas at wholesale and in interstate commerce.'' [1] This provision enhances the Commission's authority to ensure confidence in the nation's natural gas markets. The Commission's market-oriented policies for the wholesale natural gas industry require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the efficiency of price formation, the true value of transactions is very difficult to determine. Further, price transparency facilitates ensuring that jurisdictional prices are ''just and reasonable.'' [2]

The posting for FERC–551 occurs on a daily basis. The data must be available for download for 90 days and must be retained by the pipeline for 3 years.

The daily posting requirements for major non-interstate pipelines prescribed in the Commission's Order No. 720 are no longer required. The number of respondents used to develop the burden estimates does not include any major non-interstate pipelines (18 CFR 284.14).

Type of Respondents: Interstate Natural Gas Pipelines.

Estimate of Annual Burden: [3] The Commission estimates the total public reporting burden and cost for this information collection as follows:

FERC–551: REPORTING OF FLOW VOLUME AND CAPACITY BY INTERSTATE NATURAL GAS PIPELINES

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [4]	Total annual burden hours & total annual cost	Burden hours & cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
FERC–551 ...	169	365	61,685	0.5 hours; $30.22	30,842.50 hrs.; $1,864,120.70.	182.5 hrs.; $11,030.30.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

[1] Section 23(a)(2) of the NGA, 15 U.S.C. 717t–2(a)(2) (2000 & Supp. V 2005).

[2] *See* sections 4 and 5 of the NGA, 15 U.S.C. 717c and 717d.

[3] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[4] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response × $60.44 per hour = Average Cost per Response. This figure includes wages plus benefits and comes from the Bureau of Labor Statistics (*http://bls.gov/oes/current/naics2_22.htm* data from May 2015) using Management Analyst category (code #13–1111).

Dated: October 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24727 Filed 10–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–1307–000.

Applicants: WBI Energy Transmission, Inc.

Description: Annual Penalty Revenue Credit Report of WBI Energy Transmission, Inc.

Filed Date: 9/30/16.

Accession Number: 20160930–5361.

Comments Due: 5 p.m. ET 10/12/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–1306–001.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Tariff Amendment: Volume No. 2—Neg. Rate Agmt—MEX Gas Supply, S.L. SP301591—Amended to be effective 10/6/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5136.

Comments Due: 5 p.m. ET 10/17/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 06, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–24766 Filed 10–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

McHenry Battery Storage, LLC	EG16–126–000
East Pecos Solar, LLC	EG16–127–000
Solverde 1, LLC	EG16–128–000
Antelope DSR 1, LLC	EG16–129–000
Cimarron Bend Wind Project I, LLC	EG16–130–000

Take notice that during the month of September 2016, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: October 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–24762 Filed 10–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2880–014]

Cherokee Falls Hydroelectric Project, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing*: Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.*: 2880–014.

c. *Date Filed:* July 29, 2016.

d. *Submitted By*: Cherokee Falls Hydroelectric Project, LLC.

e. *Name of Project:* Cherokee Falls Hydroelectric Project.

f. *Location:* On the Broad River, in Cherokee, County, South Carolina. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Beth Harris, Enel Green Power North America, Inc., 11 Anderson Street, Piedmont, SC 29673; (864) 846–0042; email—*Beth.Harris@Enel.com.*

i. *FERC Contact:* Michael Spencer at (202) 502–6093; or email at *michael.spencer@ferc.gov.*

j. Cherokee Falls Hydroelectric Project, LLC filed its request to use the Traditional Licensing Process on August 2, 2016. Cherokee Falls Hydroelectric Project, LLC provided public notice of its request on September 16, 2016. In a letter dated October 6, 2016, the Director of the Division of Hydropower Licensing approved Cherokee Falls Hydroelectric Project, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the South Carolina State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Cherokee Falls Hydroelectric Project, LLC as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Cherokee Falls Hydroelectric Project, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://*

www.ferc.gov), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2880. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2019.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24728 Filed 10–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR16–74–000.

Applicants: Orange and Rockland Utilities, Inc.

Description: Tariff filing per 284.123(b)(1), (g): Compliance SOC CP16–101 to be effective 9/29/2016; Filing Type: 1330.

Filed Date: 9/29/2016.

Accession Number: 201609295156

http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160415-5222.

Comments Due: 5 p.m. ET 10/20/16.

284.123(g) Protests Due: 5 p.m. ET 11/28/16.

Docket Number: PR16–75–000.

Applicants: Southern California Gas Company.

Description: Tariff filing per 284.123(b)(1) + (g): So Cal Gas—Rate Change Filing—Sept 2016 to be effective 9/1/2016; Filing Type: 1300.

Filed Date: 9/30/2016.

Accession Number: 201609305001

http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160415-5222.

Comments Due: 5 p.m. ET 10/21/16.

284.123(g) Protests Due: 5 p.m. ET 11/29/16.

Docket Number: PR17–1–000.

Applicants: Columbia Gas of Ohio, Inc.

Description: Tariff filing per 284.123(b)(1)/.: COH SOC Effective 9–28–2016 to be effective 9/28/2016; Filing Type: 980.

Filed Date: 10/3/2016.

Accession Number: 201610035128.

Comments/Protests Due: 5 p.m. ET 10/24/16.

Docket Numbers: RP17–1–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—10/1/2016 to be effective 10/1/2016.

Filed Date: 10/3/16.

Accession Number: 20161003–5011.

Comments Due: 5 p.m. ET 10/17/16.

Docket Numbers: RP17–2–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—BP Energy K510941 to be effective 11/1/2016.

Filed Date: 10/3/16.

Accession Number: 20161003–5114.

Comments Due: 5 p.m. ET 10/17/16.

Docket Numbers: RP17–3–000.

Applicants: Enable Gas Transmission, LLC.

Description: Annual Report of Total Penalty Revenue Credits of Enable Gas Transmission, LLC.

Filed Date: 10/3/16.

Accession Number: 20161003–5241.

Comments Due: 5 p.m. ET 10/17/16.

Docket Numbers: RP17–4–000.

Applicants: Enable Gas Transmission, LLC.

Description: Annual Report of Linked Firm Service Penalty Revenue Credits of Enable Gas Transmission, LLC.

Filed Date: 10/3/16.

Accession Number: 20161003–5244.

Comments Due: 5 p.m. ET 10/17/16.

Docket Numbers: RP17–5–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: Annual Report Detailing 2015 Surcharge of Colorado Interstate Gas Company, L.L.C.

Filed Date: 10/3/16.

Accession Number: 20161003–5334.

Comments Due: 5 p.m. ET 10/17/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–1288–001.

Applicants: Texas Gas Transmission, LLC.

Description: Tariff Amendment: Amendment to Docket No. RP16–1288–000 to be effective 11/1/2016.

Filed Date: 10/3/16.

Accession Number: 20161003–5106.

Comments Due: 5 p.m. ET 10/17/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–24765 Filed 10–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2374–012; ER10–1533–013.

Applicants: Puget Sound Energy, Inc., Macquarie Energy LLC.

Description: Supplement to June 30, 2016 Updated Market Power Analysis for the Northwest Region of Puget Sound Energy, Inc., et al.

Filed Date: 10/5/16.

Accession Number: 20161005–5103.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER16–2211–001.

Applicants: Wisconsin Electric Power Company.

Description: Compliance filing: Wisconsin Electric FERC Electric Tariff Volume No. 9–2016 Compliance filing to be effective 9/13/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5069.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–24–000.

Applicants: Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: DEP–DOM IA RS No. 196 Sedge-Hill Concurrence Filing to be effective 9/28/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5068.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–25–000.

Applicants: Cimarron Bend Assets, LLC.

Description: Baseline eTariff Filing: Cimarron Bend Assets, LLC SFA to be effective 10/6/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5073.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–26–000.

Applicants: Arizona Public Service Company.

Description: Compliance filing: OATT Modification Pursuant to Order No. 828 to be effective 10/5/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5075.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–27–000.

Applicants: Nevada Power Company.

Description: Compliance filing: OATT Revisions Attachments N and O to be effective 10/14/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5088.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–28–000.

Applicants: Elizabethtown Energy, LLC.

Description: Tariff Cancellation: Notice of Cancellation of Market-Based Rate Tariff for Elizabethtown Energy to be effective 10/7/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5100.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–29–000.

Applicants: Lumberton Energy, LLC.

Description: Tariff Cancellation: Notice of Cancellation of Market-Based Rate Tariff for Lumberton Energy to be effective 10/7/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5102.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–30–000.

Applicants: Kingman Wind Energy I, LLC, Kingman Wind Energy II, LLC.

Description: Baseline eTariff Filing: Kingman Wind Energy I, LLC and Kingman Wind Energy II, LLC SFA to be effective 11/1/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5106.

Comments Due: 5 p.m. ET 10/26/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–24761 Filed 10–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL17–2–000]

Arizona Public Service Company; Pinnacle West Capital Corporation; Notice of Petition for Declaratory Order

Take notice that on September 7, 2016, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[1] Arizona Public Service Company (APS) and Pinnacle West Capital Corporation (Pinnacle West) filed a petition for declaratory order concerning the treatment of certain funds that APS and its parent company, Pinnacle West, have placed in trust to fund future Post-Employment Benefits other than Pensions liabilities, all as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.or* call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on November 7, 2016.

Dated: October 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24726 Filed 10–12–16; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.207(a)(2) (2016).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2725–000]

PSEG Energy Solutions LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of PSEG Energy Solutions LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 25, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–24764 Filed 10–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC17–2–000.

Applicants: North Lancaster Ranch LLC.

Description: Application for Authorization under Section 203 of the Federal Power Act, Request for Expedited Consideration and Confidential Treatment of North Lancaster Ranch LLC.

Filed Date: 10/4/16.

Accession Number: 20161004–5167.

Comments Due: 5 p.m. ET 10/25/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2708–000.

Applicants: Exelon West Medway II, LLC.

Description: Baseline eTariff Filing: Initial MBR Tariff Filing to be effective 10/1/2016.

Filed Date: 9/30/16.

Accession Number: 20160930–5394.

Comments Due: 5 p.m. ET 10/21/16.

Docket Numbers: ER17–13–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: BPA NITSA (CEC Load) to be effective 10/1/2016.

Filed Date: 10/4/16.

Accession Number: 20161004–5076.

Comments Due: 5 p.m. ET 10/25/16.

Docket Numbers: ER17–14–000.

Applicants: Big Turtle Wind Farm, LLC.

Description: § 205(d) Rate Filing: Certificate of Concurrence Filing to be effective 9/20/2016.

Filed Date: 10/4/16.

Accession Number: 20161004–5099.

Comments Due: 5 p.m. ET 10/25/16.

Docket Numbers: ER17–15–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–10–04_3rd Quarter MISO Tariff Clean-Up Filing to be effective 10/5/2016.

Filed Date: 10/4/16.

Accession Number: 20161004–5101.

Comments Due: 5 p.m. ET 10/25/16.

Docket Numbers: ER17–16–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Compliance filing: OATT Order No. 827 828 661 Compliance Filing to be effective 10/14/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5031.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–17–000.

Applicants: Essential Power, LLC.

Description: § 205(d) Rate Filing: MBR Tariff Revisions re Order No. 819 to be effective 10/6/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5033.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–18–000.

Applicants: James River Genco, LLC.

Description: § 205(d) Rate Filing: Third Party Ancillary Services Revisions re Order No. 819 to be effective 10/6/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5034.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–19–000.

Applicants: Red Oak Power, LLC.

Description: § 205(d) Rate Filing: Revised MBR Tariff re Order No. 819 to be effective 10/6/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5035.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–20–000.

Applicants: Rhode Island State Energy Center, LP.

Description: § 205(d) Rate Filing: Revised MBR Tariff re Order No. 819 to be effective 10/6/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5037.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–21–000.

Applicants: Elevation Energy Group, LLC.

Description: Baseline eTariff Filing: Market-Based Rates Tariff to be effective 10/6/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5052.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–22–000.

Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Dominion and Duke Energy Progress submit amended Interconnection Agreement 3453 to be effective 9/28/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5056.

Comments Due: 5 p.m. ET 10/26/16.

Docket Numbers: ER17–23–000.

Applicants: Southwestern Public Service Company.

Description: § 205(d) Rate Filing: SPS–OrWR–682–0.1.0–NOC to be effective 10/6/2016.

Filed Date: 10/5/16.

Accession Number: 20161005–5057.

Comments Due: 5 p.m. ET 10/26/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–24760 Filed 10–12–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9954–11–OGC]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA''), notice is hereby given of a proposed settlement agreement to settle a lawsuit filed by Air Alliance Houston, Community In-Power and Development Association, Inc., Louisiana Bucket Brigade, and Texas Environmental Justice Advocacy (''Petitioners''), in the United States Court of Appeals for the D.C. Circuit: *Air Alliance Houston, et al.* v. *EPA,* Case No. 15–1210. On July 10, 2015, Petitioners filed a petition for review challenging a final action issued by the United States Environmental Protection Agency (''EPA'') entitled ''New and Revised Emission Factors for Flares and Other Refinery Process Units and Determination for No Changes to VOC Emission Factors for Tanks and Wastewater Treatment Systems.'' 80 FR 26925 (May 11, 2015) (''Emission Factor Action''). Under the terms of the proposed settlement agreement, if EPA performs specified actions by December 16, 2016, the Petitioners will dismiss their lawsuit.

DATES: Written comments on the proposed settlement agreement must be received by November 14, 2016.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2016–0582, online at *www.regulations.gov.* For comments submitted at *www.regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Stahle, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: (202) 564–1272; fax number (202) 564–5603; email address: *stahle.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

On May 1, 2013, Petitioners filed a lawsuit against EPA alleging that the EPA had failed to review and, if necessary, revise emissions factors at least once every three years as required in CAA section 130. *Air Alliance Houston, et al.* v. *McCarthy,* No. 1:13–cv–00621–KBJ (D.D.C.). In that lawsuit, the Petitioners sought to compel EPA to review the volatile organic compounds (VOC) emissions factors for industrial flares (''flares''), liquid storage tanks (''tanks''), and wastewater collection, treatment and storage systems (''wastewater treatment systems''), and, if necessary, revise those emission factors. EPA entered into a consent decree with the Petitioners to settle that lawsuit. Under the terms of the consent decree, on April 20, 2015, EPA finalized a new VOC emissions factor for flares and finalized a determination that it was not necessary to revise the VOC emissions factors for tanks and wastewater treatment systems, and posted these actions on its AP–42 Web site (''the Emission Factor Action''). AP–42 is a guidance document that contains emissions factors and process information for more than 200 air pollution source categories.

On July 10, 2015, the Petitioners filed a petition for review in the D.C. Circuit Court of Appeals seeking judicial review of EPA's Emission Factor Action posted on its Web site on April 20, 2015, which was taken in response to the consent decree described above. Petitioners have challenged the Emission Factor Action by raising the following five issues: (1) The total hydrocarbon (''THC'') emissions factor for flares used in Section 13.5 of EPA's official Compilation of Air Pollutant Emission Factors known as ''AP–42''; (2) the minimum heat value of the gas in the combustion zone of the flare test data used to develop the VOC emissions factors in Section 13.5 of AP–42; (3) the average destruction efficiency of the flare test data used to develop the VOC emissions factor in Section 13.5 of AP–42; (4) the molecular weights used in the calculation of the VOC emissions factor in Section 13.5 of AP–42; and (5) the source classification codes (''SCCs'') associated with the flare emissions factors in Section 13.5 of AP–42.

The proposed settlement agreement would settle Petitioners' lawsuit in the United States Court of Appeals for the D.C. Circuit challenging, under CAA section 307(b)(1), the Emission Factor Action. Under the terms of the proposed settlement agreement, if EPA performs specified actions by December 16, 2016, the Petitioners will dismiss their lawsuit. Consistent with EPA practice and the terms of the settlement agreement, EPA will post any actions it takes on its AP–42 Web site at *https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emission-factors.* The proposed settlement agreement also provides for each party to bear its own litigation costs.

For a period of 30 days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to the agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the proposed settlement agreement?

The official public docket for this action under Docket ID No. EPA–HQ–OGC–2016–0582 contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 6, 2016.

Gautam Srinivasan,

Acting Associate General Counsel.

[FR Doc. 2016–24782 Filed 10–12–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0110]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 14, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the

information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0110.

Title: Application for Renewal of Broadcast Station License, FCC Form 303–S; Section 73.3555(d), Daily Newspaper Cross-Ownership.

Form Number: FCC Form 303–S.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, Local or Tribal Governments.

Number of Respondent and Responses: 3,821 respondents, 3,821 responses.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and Section 204 of the Telecommunications Act of 1996.

Estimated Time per Response: 1.25–12 hours.

Frequency of Response: Every eight year reporting requirement; Third party disclosure requirement.

Total Annual Burden: 10,403 hours.

Total Annual Costs: $3,886,358.

Nature of Response: Required to obtain or retain benefits. The statutory authority for the collection is contained Sections 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and Section 204 of the Telecommunications Act of 1996.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: FCC Form 303–S is used in applying for renewal of license for commercial or noncommercial AM, FM, TV, FM translator, TV translator, Class A TV, or Low Power TV, and Low Power FM broadcast station licenses. Licensees of broadcast stations must apply for renewal of their licenses every eight years.

This collection also includes the third party disclosure requirement of 47 CFR Section 73.3580. This rule requires local public notice of the filing of the renewal application. For AM, FM, Class A TV and TV stations, these announcements are made on-the-air. For FM/TV Translators and AM/FM/TV stations that are silent, the local public notice is accomplished through publication in a newspaper of general circulation in the community or area being served.

47 CFR Section 73.3555 is also included in this information collection. Section 73.3555 states that in order to overcome the negative presumption set forth in 47 CFR Section 73.3555(d)(4) with respect to the combination of a major newspaper and television station, the applicant must show by clear and convincing evidence that the co-owned major newspaper and station will increase the diversity of independent news outlets and increase competition among independent news sources in the market, and the factors set forth in 47 CFR Section 73.3555(d)(5) will inform this decision. (OMB approval was previously received for the information collection requirements contained in this rule section (waiver showings/filings)).

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–24725 Filed 10–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Thursday, September 29, 2016; Sunshine Period Prohibition Lifted for Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices

October 6, 2016.

The Federal Communications Commission deleted the following agenda item from the list of items scheduled for consideration at the Thursday, September 29, 2016, Open Meeting (81 FR 66963, September 29, 2016). Pursuant to 47 CFR 1.1200(a), the item remained under the sunshine period prohibition in 47 CFR 1.1203 until further notice.

This public notice establishes that the sunshine restrictions applicable to the item below are hereby lifted. The item remains subject to the ex parte rules governing permit-but-disclose proceedings in 47 CFR 1.1206.

TITLE: Expanding Consumers' Video Navigation Choices (MB Docket No. 16–42); Commercial Availability of Navigation Devices (CS Docket No. 97–80).

SUMMARY: The Commission will consider a Report and Order that modernizes the Commission's rules to allow consumers to use a device of their choosing to access multichannel video programming instead of leasing devices from their cable or satellite providers.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–24781 Filed 10–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 16–1077]

Final Notice of Intent To Declare the International Section 214 Authorization of IP To Go, LLC Terminated

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the International Bureau (Bureau) affords IP To Go, LLC (IPTG) final notice and opportunity to respond to the April 11, 2016 letter submitted by the Department of Justice (DOJ) requesting that the FCC terminate, declare null and void and no longer in effect, and/or revoke the international section 214 authorization issued to IPTG under file number ITC–214–20090508–00208.

DATES: Submit comments on or before October 28, 2016.

ADDRESSES: The Bureau is serving a copy of the Public Notice on IPTG by certified mail, return receipt requested at the last addresses of record appearing in Commission records. IPTG should send its response to Denise Coca, Chief, Telecommunications and Analysis Division, International Bureau via email at *Denise.Coca@fcc.gov* and to Veronica Garcia-Ulloa, Attorney Advisor, Telecommunications and Analysis Division, International Bureau at *Veronica.Garcia-Ulloa@fcc.gov* and file it in IBFS under File No. ITC–214–20090508–00208 via IBFS at *http://licensing.fcc.gov/myibfs/pleading.do.*

FOR FURTHER INFORMATION CONTACT: Veronica Garcia-Ulloa, Attorney Advisor, Telecommunications and Analysis Division, International Bureau,

at (202) 418–0481 or *Veronica.Garcia-Ulloa@fcc.gov.*

SUPPLEMENTARY INFORMATION: In the DOJ April 11, 2016 Letter, DOJ states that it believes IPTG is dissolved and claims that IPTG is therefore unable to comply with the conditions of its international section 214 authorization. The Commission conditioned the grant of authority on IPTG abiding by the commitments and undertakings set forth in the November 21, 2011 Agreement from the president of IPTG to DHS. On July 5, 2016, the Bureau's Telecommunications and Analysis Division sent a letter to IPTG at the last known addresses on record via certified, return receipt mail, asking IPTG to respond to DOJ's allegations by August 3, 2016. The Bureau July 5, 2016 Letter stated that failure to respond would result in the issuance of an order to terminate IPTG's international section 214 authorization. IPTG did not respond to the request.

In addition, IPTG may also be in violation of several other Commission rules and requirements. After having received an international section 214 authorization, pursuant to section 63.21(a), a carrier ''is responsible for the continuing accuracy of the certifications made in its application'' and must correct information no longer accurate ''as promptly as possible and, in any event, within thirty (30) days.'' There is no indication that IPTG is currently providing service pursuant to its international section 214 authorization. If IPTG has discontinued service that affected customers, it may also be in violation of section 63.19(a) of the Commission's rules requiring prior notification for such a discontinuance. As part of its authorization, IPTG must file annual international telecommunications traffic and revenue as required by section 43.62 of the Commission rules. Section 43.62(b) states that ''[n]ot later than July 31 of each year, each person or entity that holds an authorization pursuant to section 214 to provide international telecommunications service shall report *whether* it provided international telecommunications services during the preceding calendar year.'' Our records indicate that IPTG failed to file an annual international telecommunications traffic and revenue report indicating whether or not IPTG provided services in 2014 and 2015 and may be in violation of section 43.62 of the Commission rules. All carriers were required to file their section 43.62 traffic and revenue reports for data as of December 31, 2014 by July 31, 2015 and for data as of December 31, 2015 by July 31, 2016. Furthermore, IPTG has an outstanding debt and consequently its account is red lighted through the Red Light Display System. IPTG must visit the Commission's Red Light Display System's to pay its outstanding debt. IPTG's outstanding debt involves regulatory fees. In addition to financial penalties, section 159(c)(3) of the Communications Act and section 1.1164(f) of the Commission's rules grant the Commission the authority to revoke authorizations for failure to timely pay regulatory fees.

IPTG's failure to respond to this Public Notice will be deemed as an admission of the facts alleged by DOJ and of the violation of the statutory and rule provisions set out above. The Bureau hereby provides final notice to IPTG that it intends to take action to declare IPTG's international 214 authorization terminated for failure to comply with conditions of its authorization. We further advise IPTG that its non-compliance with the applicable regulatory provisions would warrant termination wholly apart from demonstrating IPTG's inability to satisfy the conditions of its authorization. IPTG must respond to this Public Notice and the issues alleged in the DOJ April 11, 2016 Letter, no later than 15 days after publication in the **Federal Register**.

The proceeding in this Notice shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.

Federal Communications Commission.

Denise Coca,

Chief, Telecommunications & Analysis Division, International Bureau.

[FR Doc. 2016–24770 Filed 10–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010099–062.

Title: International Council of Containership Operators.

Parties: A.P. Moller-Maersk A/S; CMA. CGM, S.A.; China COSCO Shipping Corporation Limited; Crowley Maritime Corporation; Evergreen Marine Corporation (Taiwan), Ltd.; Hamburg-Süd KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Co. S.A.; Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line, Ltd.; Pacific International Lines (Pte) Ltd.; United Arab Shipping Company (S.A.G.); Wan Hai Lines Ltd.; Yang Ming Transport Marine Corp.; and Zim Integrated Shipping Services Ltd.

Filing Party: John Longstreth, Esq.; K & L Gates LLP; 1601 K Street NW.; Washington, DC 20006–1600.

Synopsis: The amendment deletes China Ocean Shipping (Group) Company (and its subsidiary COSCO Container Lines Co., Ltd.), and China Ocean Shipping (Group) Company (and its subsidiary China Shipping Container Lines Company Limited) as separate members of the agreement because they have merged into one entity, China COSCO Shipping Corporation Limited.

Agreement No.: 012058–002.

Title: Hoegh Autoliners/K-Line Space Charter Agreement.

Parties: Hoegh Autoliners AS and Kawasaki Kisen Kaisha, Ltd.

Filing Party: John P. Meade, Esq.; ''K'' Line America, Inc.; 6199 Bethlehem Road; Preston, MD 21655.

Synopsis: The amendment adds the trade between Mexico and Puerto Rico to the geographic scope of the Agreement.

By Order of the Federal Maritime Commission.

Dated: October 7, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–24769 Filed 10–12–16; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

October 11, 2016.

TIME AND DATE: 10:00 a.m., Thursday, October 20, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

Matters To Be Considered

The Commission will hear oral argument in the matter *Secretary of Labor* v. *Northshore Mining Company,*

Docket No. LAKE 2014–219–M (Issues include whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2016–24942 Filed 10–11–16; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 25, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Treynor Bancshares, Inc.,* Treynor, Iowa; to continue to engage in lending and servicing activities pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, October 5, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–24670 Filed 10–12–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 2016.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Farmers and Merchants Bancorp,* Inc., Hannibal, Missouri, to become a bank holding company by acquiring, F&M Bank and Trust Company, Hannibal, Missouri, upon its conversion from a savings bank to a commercial bank.

Board of Governors of the Federal Reserve System, October 6, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–24672 Filed 10–12–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 7, 2016.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *Central Federal Corporation,* Worthington, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of CF Bank, Fairlawn, Ohio, upon its conversion to a national bank.

Board of Governors of the Federal Reserve System, October 7, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–24753 Filed 10–12–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 2, 2016.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Big Creek Bancshares, Inc.,* Moro, Arkansas; to become a bank holding company by acquiring 100 percent of Forrest City Financial Corporation and thereby indirectly acquire Forrest City Bank, N.A., both of Forrest City, Arkansas.

B. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Caldwell Holding Company,* Columbia, Louisiana; to acquire Progressive National Financial Corporation, and thereby indirectly acquire Progressive National Bank, both of Mansfield, Louisiana.

C. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Cathay General Bancorp,* Los Angeles, California to acquire SinoPac Bancorp and thereby indirectly acquire Far East National Bank, all of Los Angeles, California.

Board of Governors of the Federal Reserve System, October 5, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–24669 Filed 10–12–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 24, 2016.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *John R. Hill and Carol J. Hill,* both of Fort Scott, Kansas, and *Robb B. Hill and Carolyn S. Hill,* both of West Des Moines, Iowa; to acquire control of City Bancshares, Inc., parent of City State Bank, both in Fort Scott, Kansas. In addition, David L. Thompson and Sharon K. Thompson, both of Independence, Kansas, to retain shares of City Bancshares, Inc., and be approved as members of the Hill/Thompson group acting in concert.

Board of Governors of the Federal Reserve System, October 5, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–24671 Filed 10–12–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Wednesday, November 2, 2016, from 8:30 a.m. to 2:45 p.m.

ADDRESSES: The meeting will be held at AHRQ, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Jaime Zimmerman, Designated Management Official, at the Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, Maryland 20857, (301) 427–1456. For press-related information, please contact Alison Hunt at (301) 427–1244 or *Alison.Hunt@ahrq.hhs.gov.*

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827–4840, no later than Wednesday, October 19, July 15, 2016. The agenda, roster, and minutes will be available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Rockville, Maryland 20857. Ms. Campbell's phone number is (301) 427–1554.

SUPPLEMENTARY INFORMATION:

I. Purpose

The National Advisory Council for Healthcare Research and Quality is authorized by Section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director of AHRQ on matters related to AHRQ's conduct of its mission including providing guidance on (A) priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity

and opportunities for public private partnerships. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

II. Agenda

The Council meeting will convene at 8:30 a.m., with the call to order by the Council Chair and approval of previous Council summary notes. The meeting is open to the public and will be available via webcast at *www.webconferences.com/ahrq.* The meeting will begin with an update on AHRQ's current research, programs, and initiatives.

Following this update, the agenda will focus on a discussion of the learning health care system. The final agenda will be available on the AHRQ Web site at *www.AHRQ.gov* no later than Wednesday, October 26, 2016.

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2016–24742 Filed 10–12–16; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–0997]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Standardized National Hypothesis Generating Questionnaire (OMB Control Number 0920–0997, Expiration Date 10/31/2016)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

It is estimated that each year roughly 1 in 6 Americans get sick, 128,000 are hospitalized, and 3,000 die of foodborne diseases. CDC and partners ensure rapid and coordinated surveillance, detection, and response to multi-state outbreaks, to limit the number of illnesses, and to learn how to prevent similar outbreaks from happening in the future.

Conducting interviews during the initial hypothesis-generating phase of multi-state foodborne disease outbreaks presents numerous challenges. In the U.S. there is not a standard, national form or data collection system for illnesses caused by many enteric pathogens. Data elements for hypothesis generation must be developed and agreed upon for each investigation. This process can take several days to weeks and may cause interviews to occur long after a person becomes ill.

CDC requests a revision to the Standardized National Hypothesis-Generating Questionnaire (SNHGQ), used with individuals who have become ill during a multi-state foodborne disease event. Since the questionnaire is designed to be administered by public health officials as part of multi-state hypothesis-generating interview activities, this questionnaire is not expected to entail significant burden to respondents.

The Standardized National Hypothesis-Generating Core Elements Project was established with the goal to define a core set of data elements to be used for hypothesis generation during multistate foodborne investigations. These elements represent the minimum set of information that should be available for all outbreak-associated cases identified during hypothesis generation. The core elements would ensure that similar exposures would be ascertained across many jurisdictions, allowing for rapid pooling of data to improve the timeliness of hypothesis-generating analyses and shorten the time to pinpoint how and where contamination events occur.

The SNHGQ was designed as a data collection tool for the core elements, to be used when a multistate cluster of enteric disease infections is identified. The questionnaire is designed to be administered over the phone by public health officials to collect core elements data from case-patients or their proxies. Both the content of the questionnaire (the core elements) and the format were developed through a series of working groups comprised of local, state, and federal public health partners.

Many of the updates to the SNHGQ were made to better align with the questions from other existing questionnaires. Changes include: Exposure sections rearranged to improve interview flow, addition of antibiotic exposures and descriptive clinical questions, aligning demographic questions to conform with other OMB-approved questionnaires, addition of new exposure questions of interest, deletion of exposure questions that do not need to be assessed, and re-wording of existing questions to better align with other OMB-approved questionnaires and to improve question comprehension. For this revision, CDC also seeks to incorporate a number of public recommendations received during the 60-day public comment period.

The total estimated annualized burden for the Standardized National Hypothesis Generating Questionnaire is 3,000 hours (approximately 4,000 individuals identified during the hypothesis-generating phase of outbreak investigations × 45 minutes/response). There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Individuals	Standardized National Hypothesis Generating Questionnaire (Core Elements).	4,000	1	45/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–24668 Filed 10–12–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–17–16BGH; Docket No. CDC–2016–0097]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on data collection project entitled ''Data Collection for Canine Leptospirosis Surveillance in Puerto Rico.'' The goals of the project are to characterize the epidemiology of canine leptospirosis, assess the applicability of canine *Leptospira* vaccines used in Puerto Rico, and determine potential rodent, livestock, and wildlife reservoirs for leptospirosis. Findings from the study will be used to develop recommendations for the prevention of leptospirosis in dogs, focus human surveillance efforts, and guide further investigations on leptospirosis in Puerto Rico.

DATES: Written comments must be received on or before December 12, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0097 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov.*

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

''Data Collection for Canine Leptospirosis Surveillance in Puerto Rico''—Existing Collection in Use without an OMB Control Number—National Center for Emerging and Zoonotic Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) Bacterial Special Pathogens Branch (BSPB) requests approval of data collection tools to be used for active surveillance of canine leptospirosis in Puerto Rico. Active surveillance will allow for the collection of prospective data on acute cases to determine the incidence and distribution of leptospirosis in dogs, assess risk factors for infection, characterize circulating *Leptospira* serovars and species, assess applicability of vaccines currently in

use based on serovar determination, and assess rodent, livestock, and wildlife reservoirs of leptospirosis based on infecting serovars found in dogs. Findings from this study will aid in the development of evidence-based, targeted interventions for the prevention of canine leptospirosis, be used to focus human leptospirosis surveillance efforts, and guide future investigations on leptospirosis in humans and animals in Puerto Rico.

The information collection for which approval is sought is in accordance with BSPB's mission to prevent illness, disability, or death caused by bacterial zoonotic diseases through surveillance, epidemic investigations, epidemiologic and laboratory research, training and public education. Authorizing Legislation comes from Section 301 of the Public Health Service Act (42 U.S.C. 241). Successful execution of BSPB's public health mission requires data collection activities in collaboration with the state health department in Puerto Rico and with local veterinary clinics and animal shelters participating in the study.

These activities include collecting information about dogs that meet the study case definition for a suspect case of leptospirosis seen at participating veterinary clinics and shelters. The information is collected by veterinarians or their veterinary technical staff by interviewing the dog owner and reviewing medical and administrative records, as necessary. Basic information about the participating sites will also be collected for study management, as well as to augment data analysis.

Approval of this data collection tool will allow BSPB to collect information from veterinarians, vet staff and dog owners about the dog's signalment, risk factors, clinical signs and symptoms, laboratory results, treatment, and outcome. The study will also collect basic site information from participating clinics and shelters, including information about site capacity, vaccination practices, origin of dogs, and resources available at the sites.

Data collection tools will be completed onsite. For dogs that have an owner, information about the dog may be collected by veterinarians and their vet staff by interviewing the dog owner. Otherwise, data collection tools may be completed by reviewing administrative and medical records, as necessary. Data will be recorded on paper forms. Study coordinators will enter collected data into an electronic database.

BSPB estimates involvement of at least 411 respondents (385 from the general public and 26 veterinarians and their veterinary technical staff) and estimates a total of 168 hours of burden for research activities each year. The collected information will not impose a cost burden on the respondents beyond that associated with their time to provide the required data.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Veterinarians or vet technical staff	Enrollment Questionnaire	26	1	5/60	2
Veterinarians or vet technical staff	Log Sheet	26	24	1/60	10
Veterinarians or vet technical staff	Case Questionnaire	26	24	15/60	156
Total					168

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–24667 Filed 10–12–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Times and Dates:

8:30 a.m.–5 p.m., EDT, November 2, 2016.

8:30 a.m.–12 p.m., EDT, November 3, 2016.

Place: CDC, 1600 Clifton Road NE., Tom Harkin Global Communications Center, Building 19, Auditorium B, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people. This meeting will also be webcast, please see information below.

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services (HHS); the Assistant Secretary for Health; the Director, Centers for Disease Control and Prevention; the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare and Medicaid Services (CMS). The advice and guidance pertain to general issues related to improvement in clinical laboratory quality and laboratory medicine practice and specific questions related to possible revision of the Clinical Laboratory Improvement Amendment (CLIA) standards. Examples include providing guidance on studies designed to improve safety, effectiveness, efficiency, timeliness, equity, and patient-centeredness of laboratory services; revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards on medical and laboratory practice; and the modification of the standards and provision of non-regulatory guidelines to accommodate technological advances, such as new test methods, the electronic transmission of laboratory information, and mechanisms to improve the integration of public health and clinical laboratory practices.

Matters for Discussion: The agenda will include agency updates from CDC, CMS, and FDA. Presentations and discussions will include a report on the cytology workload assessment and time measure study; an update on CLIAC recommendations for laboratory biosafety; laboratory preparedness and response: The case of Zika; a report from the Institute of Medicine (IOM) CLIAC workgroup; and future CLIAC topics.

Agenda items are subject to change as priorities dictate.

Webcast: The meeting will also be webcast. Persons interested in viewing

the webcast can access information at: *http://cdclabtraining.adobeconnect.com/novembercliac/.*

Online Registration Required: All people attending the CLIAC meeting in-person are required to register for the meeting online at least 5 business days in advance for U.S. citizens and at least 10 business days in advance for international registrants. Register at: *http://wwwn.cdc.gov/cliac/Meetings/MeetingDetails.aspx.* Register by scrolling down and clicking the ''Register for this Meeting'' button and completing all forms according to the instructions given. Please complete all the required fields before submitting your registration and submit no later than October 27, 2016 for U.S. registrants and October 20, 2016 for international registrants.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments on agenda items. Public comment periods for each agenda item are scheduled immediately prior to the Committee discussion period for that item.

Oral Comments: In general, each individual or group requesting to make oral comments will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, speakers should notify the contact person below at least one week prior to the meeting date.

Written Comments: For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, it is requested that comments be submitted at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person at the mailing or email address below, and will be included in the meeting's Summary Report.

Availability of Meeting Materials: To support the green initiatives of the federal government, the CLIAC meeting materials will be made available to the Committee and the public in electronic format (PDF) on the internet instead of by printed copy. Check the CLIAC Web site on the day of the meeting for materials: *http://wwwn.cdc.gov/cliac/Meetings/MeetingDetails.aspx.* Note: If using a mobile device to access the materials, please verify that the device's browser is able to download the files from the CDC's Web site before the meeting.

Alternatively, the files can be downloaded to a computer and then emailed to the portable device. An internet connection, power source, and limited hard copies may be available at the meeting location, but cannot be guaranteed.

Contact Person for Additional Information: Nancy Anderson, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Center for Surveillance, Epidemiology and Laboratory Services, Office of Public Health Scientific Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop F–11, Atlanta, Georgia 30329; telephone (404) 498–2741; or via email at *NAnderson@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–24785 Filed 10–12–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA) PAR14–227, Workers' Compensation Surveillance.

Time and Date:

1:00 p.m.–6 p.m., EST, November 9, 2016 (Closed)

Place: Teleconference

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters For Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''PAR14–227, Workers' Compensation Surveillance, PAR14–227.''

Contact Person For More Information: Michael Goldcamp, Ph.D., Scientific Review Officer, CDC, 1095 Willowdale Road, Morg Building H, Room 1806, Mailstop 1808, Morgantown, WV 26506, Telephone: (304) 285–5951, *EHG8@CDC.GOV.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–24786 Filed 10–12–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: November 9, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ross D. Shonat, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6196, MSC 7804, Bethesda, MD 20892, 301–435–2786, *ross.shonat@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 6, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24684 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center For Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Fellowship, Career Development, and Research Grant Programs.

Date: November 22, 2016.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Viatcheslav A Soldatenkov, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, *Soldatenkovv@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Integrative Health, National Institutes of Health, HHS)

Dated: October 5, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24695 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library and Informatics Review Committee.

Date: March 9–10, 2017.

Time: March 9, 2017, 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Time: March 10, 2017, 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 5, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24704 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA–DK–16–021: NIDDK Short-Term Research Experience Program for Underrepresented Persons (STEP–UP) (R25).

Date: November 7, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Improving Diabetes Management in Pre-teens, Adolescents and/or Young Adults with Type 1 Diabetes (DP3).

Date: November 9, 2016.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452 (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary Studies.

Date: November 11, 2016.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy

Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 5, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24691 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: November 28–30, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road Bethesda, MD 20814.

Contact Person: Jane K. Battles, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 5601 Fishers Lane, Room 3F30B, Rockville, MD 20852, 240–669–5029, *battlesja@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 6, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24685 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Review of NIGMS Maximizing Investigator's Research Award (R35) Applications.

Date: November 9–10, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda Downtown, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Horowits, Ph.D., Scientific Review Officer, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18, Bethesda, MD 20892–6200, 301–594–6904, *horowitr@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Review of K99 Applications.

Date: December 1, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Cambria Suites Rockville, 1 Helen Heneghan Way, Rockville, MD 20850.

Contact Person: Tracy Koretsky, Scientific Review Officer, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12F, Bethesda, MD 20892–6200, 301–594–2886, *tracy.koretsky@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: October 6, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24683 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Phase IIB Bridge Awards.

Date: November 4, 2016.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street NW., Washington, DC 20037.

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892 *sunnarborgsw@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 5, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24707 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: November 9–10, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Jane K. Battles, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 5601 Fishers Lane, Room 3F30B, Rockville, MD 20852, 240–669–5029, *battlesja@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: *October 6, 2016.*

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24687 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: November 17, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: The next meeting of the Office of AIDS Research Advisory Council (OARAC) will be devoted to presentations and discussions on ''Research Toward a Cure.'' In addition, an update will be provided on the latest changes made to the HHS treatment and prevention guidelines by the OARAC Working Groups responsible for the guidelines.

Place: National Institutes of Health, Terrace Level Conference Center, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Paul A. Sato, Medical Officer, Office of AIDS Research, Office of the Director, NIH, 5601 Fishers Lane, Room 2E62, Rockville, MD 20852, 301–480–2330, *satop@od.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.oar.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 6, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24688 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, October 21, 2016, 08:30 a.m. to October 21, 2016, 05:00 p.m., Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on October 4, 2016, 81 FRN 193.

The meeting date has changed from October 21, 2016 to November 21, 2016. The meeting is closed to the public.

Dated: October 5, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24706 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL LIBRARY OF MEDICINE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

Date: April 6–7, 2017.

Open: April 6, 2017, 9:00 a.m. to 12:00 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: April 6, 2017, 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: April 7, 2017, 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S707, Bethesda, MD 20892, 301–827–4385, *ksteely@mail.nih.gov*.

Open: April 7, 2017, 10:00 a.m. to 11:30 a.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S707, Bethesda, MD 20892, 301–827–4385, *ksteely@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 5, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24705 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Human Tissue Models For Infectious Diseases (U19).

Date: November 16, 2016.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Brenda Lange-Gustafson, Ph.D., Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, 5601 Fishers Lane, Room 3G13, Rockville, MD 20852, 240–669–5047, *bgustafson@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 6, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24686 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the National Heart, Lung and Blood Institute, Office of Technology Transfer and Development, National Institutes of Health, 31 Center Drive Room 4A29, MSC2479, Bethesda, MD 20892–2479; telephone: 301–402–5579. A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology descriptions follow.

Enhanced Functionalization of Carbon Nanoparticles for Biomedical Applications

Description of Technology

The invention pertains to methods of increasing the density of carboxylic acids on the surface of a carbon nanoparticle that can be functionalized with biologically relevant molecules, such as antibodies or peptides, for biomedical applications. Advantageously, the method could increase functionalization of a nanoparticle by at least about $1x10^7$ functional groups/g of nanoparticle. The method includes contacting an oxygen-containing functional group on a surface of a carbon nanoparticle with a reducing agent to provide a hydroxyl group; reacting the hydroxyl group with a diazoacetate ester in the presence of a transition metal catalyst to provide an ester and then cleaving the ester to provide a carboxylic acid group. The carboxylic acid can further be secondarily functionalized to an acyl chloride, an amide, pegylated, a biotinylate, a folate, a thiol, a maleimide, an active ester, an amine, a chelated gadolinium, an azide, an alkyne, a protein tag, or a dendrimer. Examples of notable nanoparticles that can be derivatized using this method include carbon nanoparticles such as carbon nanotubes, fullerenes, graphenes, graphene oxides, and nanodiamonds; with or without fluorescent properties. Fluorescent nanoparticles are of particular interest for functionalization as they are applicable to both research and

diagnostic applications and can be visualized through microscopy.

Potential Commercial Applications

- Imaging
- Therapeutics

Competitive Advantages

- Higher degree of functionalization for carbon nanoparticles

Development Stage

- Early Stage

Inventors: Keir Neuman, Rolf Swenson, Ganesh Shenoy, Chandrasekhar Mushti (all of NHLBI).

Publications:

1. Mochalin, V. N.; Shenderova, O.; Ho, D.; Gogotsi, Y., The Properties and Applications of Nanodiamonds. Nature Nanotechnology 2012, 7 (1), 11–23.
2. Huang, J.; Deming, C. P.; Song, Y.; Kang, X.; Zhou, Z.-Y.; Chen, S., Chemical Analysis of Surface Oxygenated Moieties of Fluorescent Carbon Nanoparticles. Nanoscale 2012, 4 (3), 1010–1015.
3. Nystrom, R. F.; Brown, W. G., Reduction of Organic Compounds by Lithium Aluminum Hydride. I. Aldehydes, Ketones, Esters, Acid Chlorides and Acid Anhydrides. Journal of the American Chemical Society 1947, 69 (5), 1197–1199.
4. Nystrom, R. F.; Brown, W. G., Reduction of Organic Compounds by Lithium Aluminum Hydride. Ii. Carboxylic Acids. Journal of the American Chemical Society 1947, 69 (10), 2548–2549.
5. Aller, E.; Brown, D. S.; Cox, G. G.; Miller, D. J.; Moody, C. J. Diastereoselectivity in the O–H Insertion Reactions of Rhodium Carbenoids Derived from Phenyldiazoacetates of Chiral Alcohols. Preparation Of .Alpha.-Hydroxy And .Alpha.-Alkoxy Esters. The Journal of Organic Chemistry 1995, 60 (14), 4449–4460.
6. Hoehnel, S; Lutolf, M.P., Capturing Cell-Cell Interactions via SNAP-tag and CLIP-tag Techology. Bioconjugate Chemistry 2015, 26, 1678–1686.
7. Moon, W. K.; Lin, Y.; O'Loughlin, T.; Tang, Y.; Kim, D.-E.; Weissleder, R.; and Tung, C.-H., Enhanced Tumor Detection Using a Folate Receptor-Targeted Near-Infrared Fluorochrome Conjugate. Bioconjugate Chemistry 2003, 14, 539–545.
8. Fu, C. C.,Lee, H. Y., Chen, K. C., Lim, T. S.,Wu, H. Y., Lin, P. K.,Wei, P. K., Tsao, P. H., Chang, H. C., Fann, W. Characterization and application of single fluorescent nanodiamonds as cellular biomarkers. Proceedings of the National Academy of Sciences of the United States of America, 2007, 104(3), 727–732.
9. Chang, B. M., Lin, H. H., Su, L. J., Lin, W. D., Lin, R. J., Tzeng, Y. K, Lee, R. T., Lee, Y. C., Yu, A. L., Chang, H. C., Highly Fluorescent Nanodiamonds Protein-Functionalized for Cell Labeling and Targeting. Advanced Functional Materials 23(46): 5737–5745.

Intellectual Property: HHS Reference No. E–207–2016/0.

- US Provisional Patent Application No. 62/402,339 filed 30 September 2016.

Licensing Contact: Michael Shmilovich, Esq, CLP; 301–435–5019; *shmilovm@mail.nih.gov.*

Dated: October 6, 2016.

Michael Shmilovich,

National Heart, Lung and Blood Institute, Office of Technology Transfer and Development, National Institutes of Health.

[FR Doc. 2016–24693 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Transition to Independence Review Committee.

Date: November 3–4, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

October 5, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24694 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee meeting

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on October 18, 2016. The subject of the meeting will be ''How Reproducible Are People? Understanding Health Histories Using Medicare Claims Data.'' The meeting is open to the public.

DATES: The meeting will be held on October 18, 2016; from 1:00 p.m. to 3:30 p.m. Individuals wanting to present oral comments must notify the contact person at least 10 days before the meeting date.

ADDRESSES: The meeting will be held in the Democracy 2 Building at 6707 Democracy Blvd., Bethesda, MD, in Conference Room 7050.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, see the DMICC Web site, *www.diabetescommittee.gov,* or contact Dr. B. Tibor Roberts, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 31 Center Drive, Building 31A, Room 9A19, MSC 2560, Bethesda, MD 20892–2560, telephone: 301–496–6623; FAX: 301–480–6741; email: *dmicc@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The October 18, 2016 DMICC meeting will focus on How Reproducible Are People? Understanding Health Histories Using Medicare Claims Data.

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC Web site, *www.diabetescommittee.gov*.

Dated: October 4, 2016.

B. Tibor Roberts,

Executive Secretary, DMICC, Office of Scientific Program and Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2016–24777 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: February 23–24, 2017.

Open: February 23, 2017, 8:30 a.m. to 10:45 a.m.

Agenda: Administrative.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: February 23, 2017, 10:45 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: February 24, 2017, 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Joyce Backus, M.S.L.S., Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04, Bethesda, MD 20892, 301–496–3497, *backusj@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 5, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24703 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: February 7, 2017.

Closed: 7:45 a.m. to 8:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Patricia Flatley Brennan, RN, Ph.D., Director, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2E17, Bethesda, MD 20892, 301–496–6661, *patti.brennan@nih.gov*.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: February 7–8, 2017.

Open: February 7, 2017, 9:00 a.m. to 4:30 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: February 7, 2017, 4:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: February 8, 2017, 9:00 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Patricia Flatley Brennan, RN, Ph.D., Director, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2E17, Bethesda, MD 20892, 301–496–6661, *patti.brennan@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for at viewing at *http://videocast.nih.gov* on February 7–8, 2017.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 5, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24702 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—C.

Date: November 3–4, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 1 Democracy Plaza, 6701 Democracy Blvd. Room 1068, Bethesda, MD 20892, 301–435–0807, *slicelw@mail.nih.gov*.

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—B; Review of T32 Applications.

Date: November 15–16, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Cambria Suites Rockville, 1 Helen Heneghan Way, Rockville, MD 20850.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, 45 Center Drive, RM 3AN18A, Bethesda, MD 20814, (301) 435–0965, *newmanla2@mail.nih.gov*.

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—D; To review R25 Research Training Grant applications.

Date: November 17–18, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda Downtown, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: October 6, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24689 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute Of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Collaborative Hubs to Reduce the Burden of Suicide among American Indian and Alaska Native Youth (U19).

Date: October 26, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer,Division of Extramural Activities, National Institute of Mental Health, NIH,Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; The Neural Mechanisms of Multi-Dimensional Emotional and Social Representation.

Date: November 2, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Georgetown,1221 22nd Street NW., Washington, DC 20037.

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH Pathway to Independence Awards (K99).

Date: November 2, 2016.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health,Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: October 5, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24692 Filed 10–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0913]

Waterway Suitability Assessment for Construction of Liquefied Natural Gas Facilities; Brownsville, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Coast Guard, at Sector Corpus Christi, announces receipt of a Letter of Intent (LOI) and Waterways Suitability Assessment (WSA) for three Liquefied Natural Gas (LNG) facility construction projects in Brownsville, Texas. The LOI and WSA for Annova LNG Common Infrastructure, LLC (Annova LNG) and Texas LNG Brownsville LLC (Texas LNG) were submitted by Rodino, Inc. The LOI and WSA for Rio Grande LNG, LLC was submitted by AcuTech Group, Inc. The Coast Guard is notifying the public of this action to solicit public comments on the proposed construction of these LNG facilities, as defined by 33 CFR 127.005.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before December 12, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0913 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document: call or email MST2 Rebekah Wagner, Sector Corpus Christi Waterways Management Division, Coast Guard; telephone 361–888–3162, *Rebekah.S.Wagner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Comments

We encourage you to submit comments (or related materials) on this notice for the waterway suitability assessments for the construction of these LNG facilities. We will consider all submissions and may adjust our final action based on your comments. If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. More information regarding these projects can be found on the following Web sites: *http://annovalng.com/project; http://www.txlng.com/theproject/project-overview.html; http://www.riograndelng.com/project/.*

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Discussion

Under 33 CFR 127.007, an owner or operator intending to build a new facility handling LNG or Liquefied Hazardous Gas (LHG), or an owner or operator planning new construction to expand or modify marine terminal operations in an existing facility handling LNG or LHG, where the construction, expansion, or modification would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with a proposed facility or modification to an existing facility, must submit an LOI to the Captain of the Port (COTP) of the zone in which the facility is or will be located. Annova LNG submitted an LOI and WSA on February 23, 2015; Texas LNG submitted an LOI and WSA on February 16, 2016; Rio Grande LNG, LLC submitted an LOI and WSA on March 18, 2015.

For these projects, a Waterway Suitability Assessment Notice and Request for Comments was previously published in the **Federal Register** at *http://www.regulations.gov* under docket number USCG 2016–0626. The comment period ran from August 23, 2016 to September 22, 2016. Twelve comments were received during the comment period. However, based on additional interest in the projects, we have decided to reopen the comment period for an additional 60 days to allow for more comments to be submitted.

Under 33 CFR 127.009, after receiving an LOI, the COTP issues a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG or LHG marine traffic to the appropriate jurisdictional authorities. The LOR is based on a series of factors outlined in 33 CFR 127.009 that relate to the physical nature of the affected waterway and issues of safety and security associated with LNG or LHG marine traffic on the affected waterway.

The purpose of this notice is to solicit public comments on the proposed construction project as submitted by Rodino, Inc. on behalf of Annova LNG and Texas LNG and as submitted by AcuTech Group, Inc. on behalf of Rio Grande LNG, LLC. Input from the public may be useful to the COTP with respect to developing the LOR. The Coast Guard requests comments to help assess the suitability of the associated waterway for increased LNG marine traffic as it relates to navigation, safety, and security.

On January 24, 2011, the Coast Guard published Navigation and Vessel Inspection Circular (NVIC) 01–2011, ''Guidance Related to Waterfront Liquefied Natural Gas (LNG) Facilities.'' NVIC 01–2011 provides guidance for owners and operators seeking approval to construct and operate LNG facilities. The Coast Guard will refer to NVIC 01–2011 for process information and guidance in evaluating the project included in the LOIs and WSAs submitted by Rodino, Inc. and AcuTech Group, Inc. A copy of NVIC 01–2011 is available for viewing in the public docket for this notice and also on the Coast Guard's Web site at *http://www.uscg.mil/hq/cg5/nvic/2010s.asp.*

This notice is issued under authority of 33 U.S.C. 1223–1225, Department of Homeland Security Delegation Number 0170.1(70), 33 CFR 127.009, and 33 CFR 103.205.

Dated: October 7, 2016.

R.A. Hahn,

Captain, U.S. Coast Guard, Captain of the Port Corpus Christi, TX.

[FR Doc. 2016–24752 Filed 10–12–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0028]

Agency Information Collection Activities: Petition To Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household, Form I–600, I–600A, and Supplement 1; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on April 26, 2016, at 81 FR 24625, allowing for a 60-day public comment period. USCIS did receive 10 comments from 2 commenters in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 14, 2016. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov*. Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0028.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0020 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–600, I–600A, and Supplement 1; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The collection of this information is required to determine eligibility and suitability of U.S. adoptive parents and the eligibility of the orphan(s) they plan to adopt (or have already adopted).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–600 is 1,307 and the estimated hour burden per response is .75 hours; the estimated total number of respondents for the information collection Form I–600A is 987 and the estimated hour burden per response is .75 hours; the estimated total number of respondents for the information collection Supplement 1 is 467 and the estimated hour burden per response is .25 hours; the estimated total number of respondents for the information collection is 1,147 for Home Study and the estimated hour burden per response is 25 hours; the estimated total number of respondents for the information collection is 3,466 for biometrics processing and the estimated hour burden per response is 1 hour and 10 minutes (1.17 hours); the estimated total number of respondents for the information collection is 13 for DNA biometrics processing and the estimated hour burden per response is 6 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 47,545 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $81,604,586.

Dated: October 5, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–24682 Filed 10–12–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2016–N005; FXRS12610800000–167–FF08R0000]

Guadalupe-Nipomo Dunes National Wildlife Refuge, San Luis Obispo County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: final comprehensive conservation plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a Final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for the Guadalupe-Nipomo Dunes National Wildlife Refuge. The CCP/EA, prepared under the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, describes how the Service proposes to manage the Refuge for the next 15 years. Compatibility determinations for three existing and proposed uses are also included with the Final CCP.

DATES: The CCP and FONSI are available now. The FONSI was signed on July 29, 2016, allowing for implementation of the CCP.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI by any of the following methods. You may request a hard copy.

Agency Web site: Download a copy of the document(s) at *https://www.fws.gov/refuge/Guadalupe-Nipomo_Dunes/.*

Email: hoppermountain@fws.gov. Include ''Guadalupe CCP'' in the subject line of the message.

Fax: Attn: Michael Brady, (805) 644–1732.

U.S. Mail: Hopper Mountain National Wildlife Refuge Complex, 2493 Portola Road, Suite A, Ventura, CA 93003.

In-Person Viewing or Pickup: Copies of the Final CCP and FONSI may also be viewed at the Hopper Mountain National Wildlife Refuge Complex, 2493 Portola Road, Suite A, Ventura, CA 93003 (805–644–5185).

FOR FURTHER INFORMATION CONTACT: Winnie Chan, Refuge Planner, at (510) 792–0222, or Michael Brady, Project Leader, at (805) 644–5185 or *hoppermountain@fws.gov*

SUPPLEMENTARY INFORMATION:

Background

Guadalupe-Nipomo Dunes National Wildlife Refuge was established in 2000 under the Endangered Species Act of 1973 (16 U.S.C. 1537) to preserve and conserve Central California coastal dune and associated wetlands habitats and assist in the recovery of native plants and animals that are federally listed as threatened or endangered. The 2,553-acre Refuge is bordered to the west by the Pacific Ocean, lands owned by private agricultural interests to the east, Oso Flaco Lake Natural Area (a management unit of the Oceano Dunes State Vehicular Recreation Area) to the north, and Chevron Guadalupe Restoration Project (former Guadalupe Oil Fields) to the south.

We announce our decision and the availability of the FONSI for the final CCP for Guadalupe Nipomo Dunes NWR in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the environmental assessment (EA) that accompanied the draft CCP. This notice is in addition to our announcement of the completion of the CCP process on the refuge's Web site.

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), which amended the National Wildlife Refuge System Administration Act of 1966, requires the Service to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Our Draft CCP and EA were available for a 45-day public review and comment period, which we announced via several methods, including press releases, updates to constituents, and a **Federal Register** notice (81 FR 10882, March 2, 2016). The Draft CCP/EA identified and evaluated three alternatives for managing the Refuge for the next 15 years.

Under Alternative A (no action alternative), the current management actions, including habitat management, wildlife management, and public use opportunities, would be continued. Habitat and wildlife management activities would focus on wildlife surveys and invasive weed management. Guided interpretive walks would continue to be offered. Current staffing and funding would remain the same.

Alternative B includes those actions in Alternative A. In addition, we would moderately expand wildlife and habitat management while incrementally increasing visitor service and environmental education activities. Additional wildlife management activities include improving western snowy plover hatch rate by reducing invasive weeds and predation. A feral swine control and monitoring plan would be implemented to protect the western snowy plover, California least tern, California red-legged frog, La Graciosa thistle, and marsh sandwort habitat. Habitat and monitoring would be improved for the listed La Graciosa thistle, marsh sandwort, and red-legged frog. Of the National Wildlife Refuge System's priority public uses—wildlife observation, photography, interpretation, and environmental education—would all be enhanced on the Refuge. Public access through snowy plover breeding habitat to the back dunes of the Refuge would also be limited to a marked trail corridor (five-year pilot) to limit human disturbance. Refuge staff would develop a dedicated volunteer crew to support Refuge management and outreach. Additional staff and funding would be needed to implement this alternative.

Under Alternative C, we would reduce wildlife and habitat management in light of forecasted declining National Wildlife Refuge System budgets. The Refuge would also be closed to the public. Wildlife management activities would be primarily focused on monitoring of the listed species present on the Refuge: western snowy plover, La Graciosa thistle, and marsh sandwort. Like Alternative B, a feral swine control and monitoring plan would be implemented. Fencing would be installed or maintained where listed plant species are present. Due to the forecasted declining budgets, no visitor services would be provided to instead focus on wildlife and habitat.

We received 39 letters and 50 oral comments on the Draft CCP and EA during the review and comment period. We incorporated comments we received into the CCP when appropriate, and we responded to the comments in an appendix to the CCP. In the FONSI, we selected a modified Alternative A for implementation. The FONSI documents our decision and is based on the

information and analysis contained in the EA.

Under the selected alternative, we would continue most current management activities, but also include components from Alternative B including implementing the feral swine control plan and developing and implementing a predator management plan to protect western snowy plover and California least tern. Public access, guided interpretive walks, and environmental education would continue to be offered.

The selected alternative provides guidance for achieving the Refuge's purpose, vision, and goals; forwards the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. Based on the associated environmental assessment, this alternative is not expected to result in significant environmental impacts and therefore does not require an environmental impact statement.

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2016–24737 Filed 10–12–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR936000.L1440000.ET0000. 17XL1109AF; HAG 17–0017; OROR–68370]

Notice of Public Meeting for Amended Proposed Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: A Notice of Amended Proposed Withdrawal was published in the **Federal Register** (FR) on September 30, 2016 for approximately 5,216.18 acres of Bureau of Land Management (BLM) managed public domain and revested Oregon California Railroad lands and 95,805.53 acres of National Forest System lands (80 FR 37015). The amended application increased the proposed withdrawal term from 5 years to 20 years, and added the purpose of protecting the Southwestern Oregon watershed from possible adverse effects of mineral development. The amended application does not affect the current segregation, which expires June 28, 2017, unless the application is denied or canceled or the withdrawal is approved prior to that date. This notice announces the date, time, and location of a public meeting to be held for the amended application.

DATES AND ADDRESSES: A public meeting will be held on Tuesday, November, 15, 2016, from 6:30 pm to 8 pm at Brookings-Harbor High School, 625 Pioneer Road, Brookings, OR 97415.

FOR FURTHER INFORMATION CONTACT: Jacob Childers, BLM Oregon/ Washington State Office, 503–808–6225; Candice Polisky, USFS Pacific Nort hwest Region, 503–808–2479. Please send email inquiries to *blm_or_wa_ withdrawals@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact either of the above individuals. The FIRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The FR notice published on September 30, 2016 stated that an opportunity for public meeting would be afforded in connection with the proposed withdrawal. The public will have the opportunity to verbally comment or provide written comments at the public meeting. The publication of the FR notice on September 30, 2016 was the official start of a 90-day public comment period that extends through December 29, 2016. Written comments should be sent to the Bureau of Land Management, Oregon State Office, P.O. Box 2965, Portland, OR 97208–2965, or by email at *blm_or_wa_withdrawals@blm.gov.*

The meeting will be held in accordance with the regulations set forth in 43 CFR part 2310.3–1.

Leslie A. Frewing,

Acting Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2016–24743 Filed 10–12–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–BSD–CONC–22120; PPWOBSADC0, PPMVSCS1Y.Y00000 (177)]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; National Park Service Concessions

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on November 30, 2016. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before November 14, 2016.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_ Submission@omb.eop.gov* (email). Please provide a copy of your comments to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Mail Stop 242, Reston, VA 20192; or *madonna_baucum@nps.gov* (email). Please include ''1024–0029'' in the subject line of your comments. You may review the ICR online at *http:// www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Brian P. Borda, Chief, Commercial Services Program, National Park Service, 1201 I Street NW., Washington, DC 20005 (mail), (202) 513–7156 (phone), or *brian_borda@ nps.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Abstract

Private businesses under contract to the National Park Service (we, NPS) manage food, lodging, tours, whitewater rafting, boating, and many other recreational activities and amenities in more than 100 national parks. These services gross more than $1 billion every year and provide jobs for more than 25,000 people during peak season.

The regulations at 36 CFR part 51 primarily implement Title IV of the National Parks Omnibus Management Act of 1998 (54 U.S.C., § 101911 *et seq.,* also referred to as Pub. L. 105–391), which provides legislative authority, policies, and requirements for the solicitation, award, and administration of NPS concession contracts.

Furthermore, 54 U.S.C., § 101911 *et seq.* provides that ''all proposed concession contracts shall be awarded by the Secretary to the person, corporation or other entity submitting the best proposal, as determined by the Secretary through a competitive

selection process. Such competitive process shall include simplified procedures for small, individually-owned, concessions contracts.''

We collect the following information associated with the administration of concessions:

- Description of how respondent will conduct operations to minimize disturbance to wildlife; protect park resources; and provide visitors with a high quality, safe, and enjoyable visitor experience.
- Organizational structure and history and experience with similar operations.
- Details on violations or infractions and how they were handled.
- Financial information and demonstration that respondent has credible, proven track record of meeting obligations.

Concessioner Annual Financial Report (Forms 10–356, 10–356A, and 10–356B)

The Concessioner Annual Financial Report provides concessioner financial information as required by each concession contract. This information is necessary to comply with the requirements placed on the Secretary of the Interior by Congress. Title IV, Section 407 of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391) requires that ''a concessions contract shall provide for payment to the Government of a franchise fee or other such monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value shall be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract.'' 36 CFR part 51, subpart I requires that concession contracts ''provide for payment to the Government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved.'' In order to verify the accuracy of the report and payments of franchise fees, concessioners with gross receipts of over $1 million are required to have financial statements audited by an independent certified public accountant and have them express an opinion on the financial statements. Concessioners with gross receipts between $500,000 and $1 million must have a review opinion by an independent accountant, a lesser requirement and burden.

Form 10–356, ''Concessioner Annual Financial Report'', is an accumulation of various financial statements commonly used by industry for reporting in conformance with generally accepted accounting principles. The information provides a comprehensive view of the concessioner's financial situation at the end of its fiscal year and the concessioner's activity over the preceding year. Careful analysis provides an effective tool in the decision making process and for the tracking of concessioner and Government contractual obligations for payments and maintenance and construction requirements. The financial information being collected is necessary to provide insight into and knowledge of the concessioner's operation so that this authority can be exercised and franchise fees can be determined in a timely manner and without an undue burden on the concessioner. We collect the following information:

- Cover sheet provides identifying information and the concessioner's certification as to the accuracy of the accompanying report.
- Schedule A is an income statement summarizing the financial activity (gross receipts, expenses, and net income) of the period being reported on.
- Schedule A–1 is a worksheet for calculating the comprehensive income.
- Schedule B is a worksheet for calculating the franchise fee.
- Schedule C is a balance sheet comparing the sources (liabilities and equity) with the uses (assets) of the capital of the company at the end of the fiscal year.
- Schedule D is a detail of the fixed assets reported on the balance sheet with a special listing of possessory interest or leasehold improvement assets (potential obligations of the Government).
- Schedule E is a statement of cash flows.
- Schedule F is space reserved for explanatory notes to the report.
- Schedule G is a breakdown of gross receipts by major departments.
- Schedule H is a detail of departmental income and expenses.
- Schedule I is a detail of general and administrative expenses.
- Schedule J lists ownership and compensation to officers and owners.
- Schedule K details the additions and disposals of fixed assets during the year.
- Schedule L is a supporting schedule for any amounts that need further explanation or detail.
- Schedule M contains various operational statistics commonplace for the major services provided in parks.
- Schedule P provides an accounting for those concessioners who have a contractual repair and maintenance reserve requirement.
- Schedule Q lists the projects from that reserve.

Form 10–356A, ''Concessioner Annual Financial Report (For Concessioners with Gross Receipts Less than $500,000)''—In an attempt to reduce administrative burden, concessioners with gross receipts under $500,000 submit only a shorter report (Form 10–356A). This ''short form'' is a simplified income statement, balance sheet, and operation statistics. Concessioners with gross receipts under $250,000 do not have to submit the balance sheet.

Form 10–356B, ''Concessioner Annual Financial Report (For Concessioners with Special Accounts and Utility Add-ons)''—A limited number of concessioners have special accounts in lieu of franchise fees or rate add-ons to offset high costs for unique operations. To reduce administrative burden, additional schedules for reporting on these unique contract inclusions are provided in a separate form. The additional schedules include:

- Schedule N provides an accounting for those concessioners who have Special Accounts.
- Schedule O lists expenditures from Special Accounts.
- Schedule R provides an accounting for those concessioners who have approved rate add-ons.

Proposals for Concession Opportunities

The public solicitation process begins with the issuance of a prospectus to invite the general public to submit proposals for the contract. The prospectus describes the terms and conditions of the concession contract to be awarded, the procedures to be followed in the selection of the best proposal, and the information that must be provided.

We collect the following information from every offeror.

- *Offeror's Transmittal Letter.* This letter identifies the name of the entity offering a proposal to operate a concession contract and that entity's contact information.
- *Certificate of Business Entity Offeror.* This form identifies the type of entity for the offeror, such as corporation, Limited Liability Company, partnership, etc.
- *Business Organization Information Form for Corporation, Limited Liability Company, Partnership or Joint Venture.* This
- *Business Organization Information Form for Individual or Sole Proprietorship.* This

• *Business History Information Form.* We request information about the offeror's business history to understand any adverse history that could impact future operations under a concession contract.

• *Credit Report.* We request offerors submit a credit report so that we can understand the offeror's credit history and any risks of contracting with the entity.

In addition to this standard information, we also collect additional information in narrative and form format. The amount of information or degree of detail requested varies widely, depending upon the size and scope of the business opportunity. For example, a much greater amount of detailed information would be required for a multi-unit lodging and food service operation (such as that at Yellowstone), than would be required for a small firewood sales operation. This additional information includes the following which coincide with the five principal selection factors:

• Proposals to protect, conserve and preserve resources of the park. These proposals respond to specific resource management objectives and issues at the park and contract in question.

• Proposals to provide necessary and appropriate visitor services at reasonable rates. These proposals respond to specific visitor service questions at the park and contract in question.

• The experience and related background of the offeror, including past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the draft concession contract.

• The financial capability of the offeror to carry out its proposal. In particular, we ask for projected financials including initial investments, startup expenses, income statement, operating assumptions, cash flow statement, recapture of investments, and all associated assumptions.

• The amount of the proposed minimum franchise fee and other forms of financial consideration.

We use all of the information provided to objectively evaluate offers received for a particular business opportunity, assure that the park resources will be adequately protected, and determine which offeror will provide the best service to visitors.

Amendments

In accordance with 36 CFR 51.15, an offeror may not amend or supplement a proposal after the submission date unless requested by the Director to do so and the Director provides all offerors that submitted proposals a similar opportunity to amend or supplement their proposals. Permitted amendments must be limited to modifying particular aspects of proposals resulting from a general failure of offerors to understand particular requirements of a prospectus or a general failure of offerors to submit particular information required by a prospectus.

In accordance with 36 CFR 51.32, if the Director determines that a proposal other than the responsive proposal submitted by a preferred offeror is the best proposal submitted for a qualified concession contract, then the Director must advise the preferred offeror of the better terms and conditions of the best proposal and permit the preferred offeror to amend its proposal to match them. An amended proposal must match the better terms and conditions of the best proposal. If the preferred offeror amends the proposal within the time period allowed, and the Director determines that the amended proposal matches the better terms and conditions of the best proposal, then the Director must select the preferred offeror for award of the contract.

Appeals

Regulations at 36 CFR 51.47 state that any person may appeal to the Director, a determination that a concessioner is not a preferred offeror for the purposes of a right of preference in renewal and that the appeal must specify the grounds for the appeal. If the appellant does not identify the specific grounds on which it objects to the Director's initial preferred offeror determination, the Director could make a final determination without fully understanding the appellant's concerns or without taking into consideration important information the appellant may wish to submit in support of its position.

Request To Construct a Capital Improvement

In accordance with 36 CFR 51.54, a request for approval to construct a capital improvement must include appropriate plans and specifications for the capital improvement. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director, NPS to determine that they are elements of construction cost. The approval requirements of this and other sections of 36 CFR part 51 also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures.

Construction Report

In accordance with 36 CFR 51.55, a concessioner obtaining a leasehold surrender interest must submit a construction report to the NPS. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the NPS, a written certification from a certified public accountant (CPA). The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the concessioner in accordance with Generally Accepted Accounting Principles (GAAP), and that all components are eligible direct or indirect construction costs. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

Application To Sell or Transfer Concession Operation

36 CFR part 51, subpart J, provides that a concessioner must obtain NPS approval to assign, sell, convey, grant, contract for, or otherwise transfer: Any concession contract; any rights to operate under or manage the performance of a concession contract as a subconcessioner or otherwise; any controlling interest in a concessioner or concession contract; or any leasehold surrender interest or possessory interest obtained under a concession contract. The amount and type of information to be submitted varies with the type and complexity of the proposed transaction. Information includes, but is not limited to:

• Instruments proposed to implement the transaction.

• Narrative description of the proposed transaction.

• Opinion of counsel that the proposed transaction is lawful under all applicable Federal and State laws.

• Statement as to the existence and nature of any litigation relating to the proposed transaction.

• Description of the management qualifications, financial background, and financing and operational plans of any proposed transferee.

• Description of all financial aspects of the proposed transaction.

• Prospective financial statements (proformas).

• Schedule that allocates in detail the purchase price (or, in the case of a transaction other than an asset purchase, the valuation) of all assets assigned or encumbered. In addition, the applicant must provide a description of the basis for all allocations and ownership of all assets.

Recordkeeping

In accordance with 36 CFR 51.98, a concessioner (and any subconcessioner) must keep and make available to NPS, records for the term of the concession contract and for 5 years after the termination or expiration of the concession contract.

II. Data

OMB Control Number: 1024–0029.

Title: National Park Service Concessions, 36 CFR 51.

Service Form Numbers: NPS Forms 10–356, 10–356A, 10–356B, 10–357A, 10–357B, 10–358, 10–359A, and 10–359B.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Individuals, businesses, and nonprofit organizations.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for proposals, amendments, and appeals; annually for financial reports; and ongoing for recordkeeping.

Estimated Nonhour Cost Burden: $425,000.

Activity	Total annual responses	Completion time per response	Total annual burden hours
Concessioner Annual Financial Report			
Form 10–356, ''Concessioner Annual Financial Report''	150	15 hours	2,250
Form 10–356A, ''Concessioner Annual Financial Report (For Concessioners with Gross Receipts Less than $500,000)''.	350	4 hours	1,400
Form 10–356B, ''Concessioner Annual Financial Report (For Concessioners with Special Accounts and Utility Add-ons)''.	30	2 hours	60
Proposals for Concession Opportunities			
Large Concession	30	240 hours	7,200
Small Concession	60	80 hours	4,800
Amendments	1	1 hour	1
Appeals	1	30 minutes	1
Request To Construct a Capital Improvement			
Large Projects	31	16 hours	496
Small Projects	89	8 hours	712
Construction Report			
Large Project	31	56 hours	1,736
Small Project	89	24 hours	2,136
Application To Sell or Transfer a Concession Operation	20	80 hours	1,600
Recordkeeping			
Large Concessions	150	800 hours	120,000
Small Concessions	350	50 hours	17,500
Totals	1,382		159,892

III. Comments

On November 10, 2015, we published in the **Federal Register** (80 FR 69695) a Notice of our intent to request that OMB approve the collection of information associated with soliciting, awarding, and administering NPS concessions. We solicited comments for 60 days ending on January 11, 2016. We received one comment in response to the Notice:

Comment: A current concessioner commented that it is time consuming and expensive to have the Annual Financial Report reviewed by an accountant and then sent back to the concessioner before being submitted. The commenter recommended providing an upfront form that the accountant could fill out and submit without extra steps.

NPS Response: We have historically provided the electronic forms on our Web site, and continue to do so. Some concessioners that work with accountants have their accountants submit the forms directly to the NPS, as the commenter suggested. This will continue to be allowed, so we will not take any action. In addition, in conjunction with updates to the forms, we are proposing to simplify the submission process by allowing concessioners or their accountants to email the electronic AFR form as an attachment.

We again invite comments concerning this information collection on:

• Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

• The accuracy of our estimate of the burden for this collection of information;

• Ways to enhance the quality, utility, and clarity of the information to be collected; and

• Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: October 7, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–24751 Filed 10–12–16; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A0067F 178S180110; S2D2D SS08011000 SX066A00 33F 17XS501520]

Notice of Proposed Information Collection; Request for Comments for 1029–0030

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request renewed approval for the collection of information for State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations. This collection request has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by November 14, 2016, in order to be assured of consideration.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via email at *OIRA_submission@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0030 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov*. You may also review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION: The OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSMRE has submitted a request to OMB to renew its approval of the collection of information contained in: 30 CFR part 764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations. OSMRE is requesting a 3-year term of approval for each information collection activity.

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 OMB control number. The OMB control number for this collection is 1029–0030, and is displayed in 30 CFR 764.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on July 6, 2016 (81 FR 44043). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR part 764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations Areas designated by Act of Congress.

OMB Control Number: 1029–0030.

Summary: This part implements the requirement of section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95–87, which provides authority for citizens to petition States to designate lands unsuitable for surface coal mining operations, or to terminate such designation. The regulatory authority uses the information to identify, locate, compare and evaluate the area requested to be designated as unsuitable, or terminate the designation, for surface coal mining operations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Individuals or groups that petition the States, and the State regulatory authorities that must process the petitions.

Total Annual Respondents: 1 petition and 1 regulatory authority.

Total Annual Burden Hours: 600 hours for individuals or groups, and 4,000 for the regulatory authority.

Total Annual Non-wage Costs: $120.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1029–0030 in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 7, 2016.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2016–24774 Filed 10–12–16; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments; Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Food Supplements and Vitamins, Including Ocular Antioxidants and Components Thereof and Products Containing the Same, DN 3177;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under § 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Kemin Industries Inc. and Kemin Foods, L.C. on October 6, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain food supplements and vitamins, including ocular antioxidants and components thereof and products containing the same. The complaint names as respondents OmniActive Health Technologies of India and OmniActive Health Technologies, Inc. of Morristown, NJ. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3177'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel [2], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS [3].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.
Issued: October 6, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–24711 Filed 10–12–16; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–977]

Certain Arrowheads With Deploying Blades and Components Thereof and Packaging Therefor; Commission Decision To Review in Part an Initial Determination Granting Complainants' Motion for Summary Determination of a Violation of Section 337; Request for Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination (''ID'') (Order No. 10) of the presiding administrative law judge (''ALJ'') granting complainants' motion for summary determination of a violation of section 337. The Commission also requests written submissions regarding remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its

Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 22, 2015, based on a complaint filed on behalf of FeraDyne Outdoors LLC and Out RAGE LLC, both of Cartersville, Georgia. 80 FR 79612–13. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain arrowheads with deploying blades and components thereof and packaging therefor by reason of infringement of certain claims of U.S. Patent Nos. RE44,144; 6,517,454 (''the '454 patent''); 8,758,176 (''the '176 patent''); 8,986,141 (''the '141 patent''); 9,068,806 (''the '806 patent''); 7,771,298 (''the '298 patent''); D710,962; D711,489; and of U.S. Trademark Registration No. 4,812,058. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named the following nine respondents: Linyi Junxing Sports Equipment Co., Ltd. (''Junxing Sports'') of Shandong, China; Ningbo Faith Sports Co., Ltd. (''Faith Sports''), Ningbo Forever Best Import & Export Co., Ltd. (''Forever Best''), and Ningbo Linkboy Outdoor Sports Co., Ltd. (''Linkboy Outdoor''), all of Zhejiang, China; Shenzhen Zowaysoon Trading Company Ltd. (''Zowaysoon Trading'') of Shenzhen, China; Xiamen Xinhongyou Industrial Trade Co. Ltd. (''Xinhongyou Industrial'') and Xiamen Zhongxinyuan Industry & Trade Ltd. (''Zhongxinyuan Industry''), both of Fujian, China; and Zhengzhou IRQ Trading Limited Company (''IRQ Trading'') and Zhengzhou Paiao Trade Co., Ltd. (''Paiao Trade''), both of Henan, China. The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation.

On April 28, 2016, complainants filed a motion for summary determination of a violation of section 337 pursuant to Commission Rule 210.16(c)(2) to support its request for entry of a general exclusion order with respect to all asserted intellectual property. OUII filed a response in support of the motion.

On May 10, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 6) finding the following seven respondents in default: Junxing Sports, Forever Best, Linkboy Outdoor, Zowaysoon Trading, Zhongxinyuan Industry, IRQ Trading, and Paiao Trade. On June 23, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 8) finding Xinhongyou Industrial in default. On June 28, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 9) terminating the investigation as to (1) Faith Sports based on withdrawal of the complaint as to Faith Sports; and (2) claims 2–3, 5, and 8 of the '545 patent; claims 5 and 10 of the '298 patent; claim 3 of the '176 patent; claim 8 of the '141 patent; and claim 3 of the '806 patent based on withdrawal of these patent claims against all named respondents.

The ALJ issued the subject ID on August 22, 2016, granting complainants' motion for summary determination. The ALJ found that all defaulting respondents met the importation requirement and that complainants satisfied the domestic industry requirement. *See* 19 U.S.C. 1337(a)(1)(B), (a)(2). The ID finds that a violation of section 337 has occurred based on its finding that each of the defaulting respondents' accused products infringe one or more of the asserted claims of the patents at issue and infringe the trademark at issue as established by substantial, reliable, and probative evidence in accordance with Commission Rule 210.16(c)(2). The ID also contained the ALJ's recommended determination on remedy and bonding. The ALJ recommended issuance of a general exclusion order with respect to the asserted intellectual property, but did not recommend issuance of cease and desist orders directed against the defaulting respondents. No petitions for review were filed.

Having examined the record of this investigation, the Commission has determined to review in part the subject ID. Specifically, the Commission has determined to review: (1) The ID's finding that complainants satisfy the economic prong of the domestic industry requirement under section 337(a)(3)(C) with respect to all asserted patents and the asserted trademark; and (2) the ID's finding that the Commission has personal jurisdiction over all defaulting respondents. The Commission also corrects typographical errors on pages 14, 18, and 24 of the subject ID. The last two sentences of the first full paragraph on page 14 are deleted (*i.e.,* beginning with ''In this investigation . . .''), and the two references to claim 32 of the '144 patent on pages 18 and 24 are corrected to reference claim 38 of the '144 patent. The Commission has determined not to review the remainder of the ID. On review with respect to issue (1), the Commission has determined to take no position on the ID's finding that complainants satisfy the economic prong of the domestic industry requirement under section 337(a)(3)(C) with respect to all asserted patents and the asserted trademark. On review with respect to issue (2), the Commission has determined to modify the ID and adds the following sentence on page 8 of the ID (before the sentence beginning with ''It is therefore found . . .''):

> Also, there is a sufficient connection between the defaulting respondents and the United States to make it fair to require them to defend the action at the Commission. *See* Mot. at 8–11, 66–68 (citing *Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof,* Inv. No. 337–TA–486, Comm'n Op., 2003 WL 22147635, at *12 (July 1, 2003)).

As noted above, eight respondents were found in default. Section 337(g) and Commission Rule 210.16(c) authorize the Commission to order relief against respondents found in default unless, after considering the public interest, it finds that such relief should not issue. Before the ALJ, complainants sought a general exclusion order under section 337(g)(2) and cease and desist orders directed against the defaulting respondents. Because a general exclusion order is sought, complainants are required to establish that a violation of section 337 has occurred by substantive, reliable, and probative evidence pursuant to Commission Rule 210.16(c)(2).

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone*

Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994). In particular, if complainants seek a cease and desist order directed against any defaulting respondent, please brief the following issues:

(1) Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If complainants also rely on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.

(2) In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

Complainants and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire, the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on October 20, 2016. Reply submissions must be filed no later than the close of business on October 27, 2016. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–977'') in a prominent place on the cover page and/or the first page. *(See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/mles/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: October 6, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–24719 Filed 10–12–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 2014–10, Direct Monitoring of Flare Combustion Efficiency

Notice is hereby given that, on September 1, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum Project No. 2014–10, Direct Monitoring of Flare Combustion Efficiency (''PERF Project No. 2014–10'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of

antitrust plaintiffs to actual damages under specified circumstances. Specifically, Shell Global Solutions (US) Inc., Houston, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF Project No. 2014–10 intends to file additional written notifications disclosing all changes in membership.

On February 18, 2016, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 2016 (81 FR 14486).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–24717 Filed 10–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Opendaylight Project, Inc.

Notice is hereby given that, on September 9, 2016 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), OpenDaylight Project, Inc. (''OpenDaylight'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Baidu Online Network Technology (Beijing) Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; and China Mobile Communication Co., Ltd Research Institute, Beijing, PEOPLE'S REPUBLIC OF CHINA, have been added as parties to this venture.

Also, Radware Ltd., Telaviv, ISRAEL; Flextronics, Ebene, MAURITIUS; VMware Inc., Palo Alto, CA; and International Business Machines Inc., Endicott, NY, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenDaylight intends to file additional written notifications disclosing all changes in membership.

On May 23, 2013, OpenDaylight filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 1, 2013 (78 FR 39326).

The last notification was filed with the Department on June 27, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 2016 (81 FR 48462).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–24721 Filed 10–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Cooperative Research Group on ROS-Industrial Consortium-Americas

Notice is hereby given that, on August 29, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (''RIC-Americas'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its Membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3M Company, St. Paul, MN, has been added as a party to this venture.

Also, Ford Motor Company, Livonia, MI, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and RIC-Americas intends to file additional written notifications disclosing all changes in membership or planned activities.

On April 30, 2014, RIC-Americas filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on January 27, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 9, 2016 (81 FR 12526).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–24720 Filed 10–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on August 30, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Arizona State University, Tempe, AZ; Clayton County Public School, Jonesboro, GA; Japan Electronic Publishing Association, Tokyo, JAPAN; Pittsburgh Public Schools, Pittsburgh, PA; Polk County Public Schools, Bartow, FL; Portfolium, Inc., San Diego, CA; UNINETT AS, Trondheim, NORWAY; and The University of British Columbia, Vancouver, British Columbia, CANADA, have been added as parties to this venture.

Also, MediaCore, Vancouver, British Columbia, CANADA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on June 8, 2016. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on July 6, 2016 (81 FR 44048).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–24722 Filed 10–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on August 31, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chongqing Cable Networks Co., Ltd., Chongqing, PEOPLE'S REPUBLIC OF CHINA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on March 17, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 14, 2016 (81 FR 22119).

Patricia A. Brink,

Director of Civil Enforcement Antitrust Division.

[FR Doc. 2016–24724 Filed 10–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on August 24, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Open Group, L.L.C. (''TOG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Azeemi Technologies, Riyadh, SAUDI ARABIA; CTC TrainCanada, Inc., Ottawa, CANADA; DAIN s.r.o, Prague, CZECH REPUBLIC; DRS Training & Control Systems, LLC, Fort Walton Beach, FL; Impetus Consulting FZ–LLC, Dubai, UNITED ARAB EMIRATES; Informatica Corporation, Redwood City, CA; Institute for Information Industry, Taipei, TAIWAN; ITM Beratungsgesellschaft GmbH, Stuttgart, GERMANY; Koenig Solutions Limited, New Delhi, INDIA; Manipal Global Education Services Private Limited, Bangalore, INDIA; Methods Advisory Ltd., London, UNITED KINGDOM; National Security Agency, Fort Meade, MD; ORSYS Formation, Paris, FRANCE; People Media S.A. de C.V., Mexico City, MEXICO; Prism Tech, Woburn, MA; The Organization Zone LLC, San Jose, CA; ValueFlow IT Pty. Ltd., Cattai, AUSTRALIA; Vector Software, Inc., East Greenwich, RI; Vinsys IT Consulting, Pune, INDIA; VTS, Inc., Folsom, CA; and University of Warwick, Coventry, UNITED KINGDOM, have been added as parties to this venture.

Also, Alliant Techsystems Operations LLC, Clearwater, FL; Camber Corporation, Huntsville, AL; Chesapeake Technology International Corp., California, MD; Concurrent Computer Corporation, Duluth, GA; Deccan Global Solutions LLC, Cumming, GA; Department of Navy, Patuxent River, MD; European Aeronautics Defense and Space Company, Cedex, FRANCE; Fortescue Metals Group, East Perth, AUSTRALIA; Goobiz, Cergy, FRANCE; Intelligent Training de Colombia, Bogota, COLOMBIA; IRM United Kingdom Strategic IT Training, Pinner, UNITED KINGDOM; Juniper Networks, Herndon, VA; KPN Corporate Market B.V., Amsterdam, THE NETHERLANDS; Kwezi Software Solutions (Pty) Ltd., Woodmead, SOUTH AFRICA; Lawrence Berkeley National Laboratory, Berkeley, CA; Sigma AB, Gothenburg, SWEDEN; and UTC Aerospace Systems, Windsor Locks, CT, have withdrawn as parties to this venture.

In addition, Orbus Software has changed its name to Seattle Software, London, UNITED KINGDOM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on May 13, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 21, 2016 (81 FR 40350).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–24723 Filed 10–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on August 30, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AW Europe S.A., Braine-L'Alleud, BELGIUM; and CDA, Albrechts, GERMANY, have been added as parties to this venture.

Also, Arvato Entertainment Europe GmbH, Gutersloh, GERMANY; Foryou General Electronics Co., Ltd., Huizhou, Guangdon, PEOPLE'S REPUBLIC OF CHINA; GM Records Marek Grela,

Warsaw, POLAND; GZ Digital Media, A.S., Lodenice, CZECH REPUBLIC; Imagica Corporation, Tokyo, JAPAN; NXP B.V., Eindhoven, THE NETHERLANDS; Optrom, Inc., Miyagi-ken, JAPAN; Promese Netherlands BV, Breda, THE NETHERLANDS; Regency Media Pty Ltd., Victoria, AUSTRALIA; Replic S.r.1., Milano, ITALY; SIIX Corp., Osaka, JAPAN; Stebbing Recording Centre Ltd., Auckland, NEW ZEALAND; and Tonfunk GmbH Ermsleben, Falkenstein Harz, GERMANY, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on May 9, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2016 (81 FR 37214).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–24718 Filed 10–12–16; 8:45 am]

BILLING CODE P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting: Board of Directors and Its Six Committees

AGENCY: Legal Services Corporation.

ACTION: Change notice.

SUMMARY: On October 11, 2016, the Legal Services Corporation (LSC) published a notice in the **Federal Register** (81 FR 70136) titled ''Board of Directors and its Six Committees will meet on October 16–18, 2016, Mountain Standard Time (MST)''. The Board of Directors (Closed Session) is scheduled to meet on October 18, 2016, to approved the Board of Directors Closed Session minutes from July 17, 2016. A correction to change the date on item #2 on the Board of Directors Closed Session Agenda to July 19, 2016; all other items remain consecutively the same. The **Federal Register** Notice *Foot Note* stating all meeting times are Eastern Standard Time. A correction to change all meeting times to Mountain Standard Time.

DATES: This change is effective October 11, 2016.

FOR FURTHER INFORMATION CONTACT: Katherine Ward, Executive Assistant to the Vice President for Legal Affairs and General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007; (202) 295–1500; *kward@lsc.gov.*

SUPPLEMENTARY INFORMATION: This document changes the notice by revising the Board of Directors Closed Session Agenda by changing the date of the draft minutes to July 19, 2016.

This document changes the **Federal Register** Notice *Foot Note,* changing all meeting times to Mountain Standard Time (MST).

Changes in the Meeting: Item #2 of the Board of Directors Closed Session Agenda and the *Foot Note* in the **Federal Register** Notice.

—Item #2 of the Agenda: Approval of minutes of the Board's Closed Session meeting of July 19, 2016

and

—*Foot Note* in the **Federal Register** Notice stating all meeting start times are Mountain Standard Time (MST).

Dated: October 11, 2016.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2016–24935 Filed 10–11–16; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Notice of Proposed Information Collection Request: ''Museums Empowered: Professional Development and Capacity Building Opportunities for Museums''—A Museums for America Special Initiative

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Service (''IMLS'') as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning Museums Empowered: Professional Development and Capacity Building Opportunities for Museums—A Museums for America Special Initiative.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 12, 2016.

ADDRESSES: For a copy of the documents contact: Mark Isaksen, Senior Museum Program Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024. Mr. Isaksen can be reached by telephone: 202–653–4662; fax: 202–653–4667; email: *misaksen@imls.gov* or by or by *teletype* (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 35,000 museums. The Institute's mission is to inspire libraries and museums to advance innovation, learning and civic engagement. We provide leadership through research, policy development, and grant making. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. (20 U.S.C. 9101 *et seq.*).

The IMLS is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

II. Current Actions

To administer a special initiative in the Museums for America (MFA) grant program titled Museums Empowered: Professional Development and Capacity Building Opportunities for Museums—A Museums for America Special Initiative.

Museums for America (MFA) grants support projects that strengthen the ability of an individual museum to serve its public. This special MFA initiative will provide professional development and capacity building opportunities for eligible museums.

As centers of innovation and discovery, as well as catalysts of community revitalization, museums are at the forefront of change in our communities. Like any other institution, museums need to remain dynamic to respond to fast-evolving technological advances and changing demographics. Museums also need to generate and share outcomes-based data and results of their community impact and develop sustainable organizational structures and strategies for continued growth and vitality. Professional Development is critical for museums to deliver on these areas of need.

To support and empower museums of all sizes and disciplines in responding to the evolving needs and changes, this MFA special initiative has four areas of focus for professional development and capacity building 1. Diversity and Inclusion 2. Digital Technology 3. Evaluation 4. Organizational Management. Potential projects will address one of these four priority areas and help strengthen the capability of an individual museum to better serve its public.

Funded projects may support a wide variety of training opportunities for museum staff at a variety of levels (senior leadership, middle management, front-line staff, interns and volunteers) and in various lines of museum work or a combination of (education and outreach, interpretation, curation, registration, conservation, exhibition design, administration, finance, marketing, public relations, community engagement, visitor services security and other).

Agency: Institute of Museum and Library Services.

Title: ''Museums Empowered: Professional Development and Capacity Building Opportunities for Museums''—A Museums for America Special Initiative.

OMB Number: TBD.

Agency Number: 3137.

Frequency: One time.

Affected Public: Museums that meet the IMLS Museums for America institutional eligibility criteria.

Number of Respondents: 100.

Estimated Time per Respondent: 40 hours.

Total Burden Hours: 4,000.

Total Annualized cost to respondents: $109,600.00.

Total Annualized capital/startup costs: 0.

Total Annualized Cost to Federal Government: $13,651.84.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Stephanie Burwell, Chief Information Officer, Office of the Chief Information Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024–2135. Mrs. Burwell can be reached by Telephone: 202–653–4684, Fax: 202–653–4625, or by email at *sburwell@imls.gov* or by teletype (TTY/TDD) at 202–653–4614. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

Dated: October 6, 2016.

Kim Miller,

Grants Management Specialist.

[FR Doc. 2016–24681 Filed 10–12–16; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 19 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: All meetings are Eastern time and ending times are approximate:

Theater and Musical Theater (review of applications): This meeting will be closed.
Date and time: November 3, 2016; 1:00 p.m. to 3:00 p.m.

Theater and Musical Theater (review of applications): This meeting will be closed.
Date and time: November 3, 2016; 4:00 p.m. to 6:00 p.m.

Music (review of applications): This meeting will be closed.
Date and time: November 7, 2016; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.
Date and time: November 7, 2016; 3:00 p.m. to 5:00 p.m.

Theater and Musical Theater (review of applications): This meeting will be closed.
Date and time: November 9, 2016; 2:00 p.m. to 4:00 p.m.

Theater and Musical Theater (review of applications): This meeting will be closed.
Date and time: November 10, 2016; 1:00 p.m. to 3:00 p.m.

Theater and Musical Theater (review of applications): This meeting will be closed.
Date and time: November 10, 2016; 4:00 p.m. to 6:00 p.m.

Arts Education (review of applications): This meeting will be closed.
Date and time: November 10, 2016; 1:30 p.m. to 3:30 p.m.

Arts Education (review of applications): This meeting will be closed.
Date and time: November 17, 2016; 12:30 p.m. to 2:30 p.m.

Arts Education (review of applications): This meeting will be closed.
Date and time: November 17, 2016; 3:00 p.m. to 5:00 p.m.

Music (review of applications): This meeting will be closed.
Date and time: November 17, 2016; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.
Date and time: November 17, 2016; 3:00 p.m. to 5:00 p.m.

Arts Education (review of applications): This meeting will be closed.
Date and time: November 21, 2016; 1:30 p.m. to 3:30 p.m.

Opera (review of applications): This meeting will be closed.
Date and time: November 21, 2016; 12:00 p.m. to 2:00 p.m.

Opera (review of applications): This meeting will be closed.
Date and time: November 21, 2016; 3:00 p.m. to 5:00 p.m.

Visual Arts (review of applications): This meeting will be closed.
Date and time: November 21, 2016; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.
Date and time: November 21, 2016; 2:30 p.m. to 4:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 22, 2016; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 22, 2016; 2:30 p.m. to 4:30 p.m.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: October 7, 2016.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2016–24750 Filed 10–12–16; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities, National Foundation On The Arts and The Humanities.

ACTION: Notice of meetings.

SUMMARY: The National Endowment for the Humanities will hold fourteen meetings of the Humanities Panel, a federal advisory committee, during November, 2016. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

ADDRESSES: The meetings will be held at the National Endowment for the Humanities at Constitution Center at 400 7th Street SW., Washington, DC 20506, unless otherwise indicated.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW., Room, 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. Date: November 1, 2016.

This meeting will discuss applications on the subjects of U.S. History and Culture: State, Regional, and Local History, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

2. Date: November 1, 2016.

This meeting will discuss applications on the subject of History, for the Public Humanities Projects—Community Conversations grant program (planning grants), submitted to the Division of Public Programs.

3. Date: November 2, 2016.

This meeting will discuss applications on the subjects of Film, Radio, and Web for Media Projects: Development Grants, submitted to the Division of Public Programs.

4. Date: November 2, 2016.

This meeting will discuss applications on the subject of U.S. History and Culture: African American History, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

5. Date: November 3, 2016.

This meeting will discuss applications on the subject of Literature, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

6. Date: November 3, 2016.

This meeting will discuss applications on the subjects of Art and History, for the Public Humanities Projects—Community Conversations grant program (implementation grants), submitted to the Division of Public Programs.

7. Date: November 9, 2016.

This meeting will discuss applications on the subjects of Arts and Culture, for the Public Humanities Projects—Exhibitions grant program (planning grants), submitted to the Division of Public Programs.

8. Date: November 9, 2016.

This meeting will discuss applications on the subject of World Studies I: Ancient to Early-Modern Era, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

9. Date: November 10, 2016.

This meeting will discuss applications on the subjects of American Studies II: Folkways and Popular Culture, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

10. Date: November 14, 2016.

Address: Ministerio de Ciencia, Tecnología e Innovación Productiva (MINCYT), Polo Científico y Tecnológico, Godoy Cruz 2320, Ciudad Autónoma de Buenos Aires, C1425FQD, Argentina.

This meeting will discuss applications for the 2016 Digging into Data Challenge, submitted to the Office of Digital Humanities.

11. Date: November 15, 2016.

Address: Ministerio de Ciencia, Tecnología e Innovación Productiva (MINCYT), Polo Científico y Tecnológico, Godoy Cruz 2320, Ciudad Autónoma de Buenos Aires, C1425FQD, Argentina.

This meeting will discuss applications for the 2016 Digging into Data Challenge, submitted to the Office of Digital Humanities.

12. Date: November 15, 2016.

Address: Ministerio de Ciencia, Tecnología e Innovación Productiva (MINCYT), Polo Científico y Tecnológico, Godoy Cruz 2320, Ciudad Autónoma de Buenos Aires, C1425FQD, Argentina.

This meeting will discuss applications for the 2016 Digging into Data Challenge, submitted to the Office of Digital Humanities.

13. Date: November 10, 2016.

Address: The Library of Congress, Jefferson Building, 10 First Street, SE., Washington, DC 20540.

This meeting will discuss applications for Kluge Fellowships, submitted to the Division of Research Programs.

14. Date: November 30, 2016.

This meeting will discuss applications on the subjects of Archaeology and Ethnography, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. The Committee Management Officer, Elizabeth Voyatzis,

has made this determination pursuant to the authority granted her by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: October 6, 2016.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2016–24714 Filed 10–12–16; 8:45 am]

BILLING CODE 7536–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before December 12, 2016.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION: The Peace Corps has mechanisms in place to gather information from active Volunteers and the host country nationals who work and live with them. Currently, there is no such mechanism for collecting comprehensive information from Volunteers after their service ends. To fill this gap, the Peace Corps proposes to conduct a survey with these returned Peace Corps Volunteers (RPCVs). The information collected through the proposed survey will augment the Peace Corps' other strategic planning activities and provide information for its annual Performance and Accountability Report. The survey will be conducted by Peace Corps' Office of Third Goal and Returned Volunteer Services (3GL). The information collected through the survey will support the Peace Corps' ability to report on its performance, as well as to provide information to inform Peace Corps Operations.

OMB Control Number: 0420–xxxx.

Title: 2016 Returned Peace Corps Volunteer Survey (RPCV Survey).

Type of Review: New.

Affected Public: Individuals.

Respondents' Obligation To Reply: Voluntary.

Burden to the Public

a. Number of Respondents (first year): 25,000.

b. Frequency of response: 1 response.

c. Completion time: 0.33 hours.

d. Annual burden hours: 8,333 hours.

General Description of Collection: The information collected will support interpretation of performance data by the Office of Third Goal and Returned Volunteer Services, the Office Volunteer Recruitment and Selection, Peace Corps Response, the Office of Health Services, and the Office of Strategic Partnerships. If the information were not collected, long-range program planning and the ability of the Peace Corps to adapt its programs to the needs of those it serves would be negatively impacted.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice issued in Washington, DC, on October 6, 2016.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2016–24715 Filed 10–12–16; 8:45 am]

BILLING CODE 6051–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting Notice

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Federal Salary Council will meet on Friday, October 28, 2016, at the time and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations and experts in the fields of labor relations and pay policy. The Council makes recommendations to the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) about the locality pay program for General Schedule employees under § 5304 of title 5, United States Code. The Council's recommendations cover the establishment or modification of locality pay areas, the coverage of salary surveys, the process of comparing Federal and non-Federal rates of pay, and the level of comparability payments that should be paid.

The Council will hear public testimony about the locality pay program, review the results of pay comparisons, and formulate its recommendations to the President's Pay Agent on pay comparison methods, locality pay rates, and locality pay areas and boundaries for 2018. The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to submit testimony or present material to the Council at the meeting.

DATES: Friday, October 28, 2016, at 2:00 p.m.

LOCATION: Office of Personnel Management, 1900 E Street NW., Room 1350, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Brenda L. Roberts, Deputy Associate Director, Pay and Leave, Office of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415–8200. Phone (202) 606–2838; FAX (202) 606–0824; or email at *pay-leave-policy@opm.gov.*

For The President's Pay Agent.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–24792 Filed 10–12–16; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Senior Executive Service—Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Carmen Garcia, Employee Services—OPM Human Resources, Office of Personnel Management, 1900 E Street

NW., Washington, DC 20415, (202) 606–1048.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

Beth F. Cobert,

Acting Director.

The following have been designated as members of the Performance Review Board of the U.S. Office of Personnel Management:

Kiran Ahuja, Chief of Staff
Kathleen McGettigan, Chief Management Officer
Michael Grant, White House Liaison
Dennis Coleman, Chief Financial Officer
Jonathan Foley, Director—Office of Planning and Policy Analysis
Kenneth Zawodny, Associate Director for Retirement Services
Joseph Kennedy, Associate Director for Human Resources Solutions
Mark Reinhold, Associate Director for Employee Services and Chief Human Capital Officer
Andrea Bright, Deputy Associate Director for Human Resources—Executive Secretariat

[FR Doc. 2016–24789 Filed 10–12–16; 8:45 am]

BILLING CODE 6325–45–P

OFFICE OF PERSONNEL MANAGEMENT

Information and Instructions on Your Reconsideration Rights, OMB No. 3206–0237

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), OMB No. 3206–0237, Information and Instructions on Your Reconsideration Rights. The purpose of this notice is to allow an additional 30 days for public comments. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until November 14, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of this ICR, with applicable supporting documentation, contact the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The information collection was previously published in the **Federal Register** (81 FR 31267, May 18, 2016) allowing for a 60 day public comment period. No comments were received. Although the Office of Management and Budget did not receive any comments previously, we are particularly interested in seeking comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Form RI 38–47 gives specific instructions on how to request reconsideration of an initial decision that affects an individual's rights and interests under the Civil Service Retirement System or the Federal Employees Retirement System. In addition, reconsideration rights are extended for denials of requests to enroll or change enrollment of health and life insurance benefits under the Federal Retired or Federal Employees Health Benefits program or the Federal Employees Group Life insurance program.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Information and Instructions on Your Reconsideration Rights.

OMB Number: 3206–0237.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 3,100.

Estimated Time per Respondent: 45 minutes.

Total Burden Hours: 2,325 hours.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–24791 Filed 10–12–16; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2016–49; MC2017–1 and CP2017–1; MC2017–2 and CP2017–2; MC2017–3 and CP2017–3; MC2017–4 and CP2017–4]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

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

DATES: *Comments are due:* October 14, 2016 (Comment due date applies to all Docket Nos. listed above)

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

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

SUPPLEMENTARY INFORMATION:

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II. Docketed Proceeding(s)

I. Introduction

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

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–49; *Filing Title:* Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 166; *Filing Acceptance Date:* October 5, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 14, 2016.

2. *Docket No(s).:* MC2017–1 and CP2017–1; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 245 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* October 5, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* October 14, 2016.

3. *Docket No(s).:* MC2017–2 and CP2017–2; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 246 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* October 5, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* October 14, 2016.

4. *Docket No(s).:* MC2017–3 and CP2017–3; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 247 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* October 5, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* October 14, 2016.

5. *Docket No(s).:* MC2017–4 and CP2017–4; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 11 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* October 5, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Lyudmila Y. Bzhilyanskaya; *Comments Due:* October 14, 2016.

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

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–24713 Filed 10–12–16; 8:45 am]

BILLING CODE 7710–FW–P

PRESIDIO TRUST

Notice of Wireless Telecommunications Site

AGENCY: The Presidio Trust.

ACTION: Public notice.

SUMMARY: This notice announces the Presidio Trust's receipt of and availability for public comment on an application from T-Mobile West LLC to construct and operate a new wireless telecommunications facilities site (''Project'') in the Presidio of San Francisco. The proposed location of the Project is in the vicinity of 1450 Battery Caulfield Road.

The Project involves (i) co-locating nine antennae and one microwave dish mounted at a centerline of 116 feet on a 130-foot lattice tower being constructed by Verizon Wireless, and (ii) placing the associated radio and communications equipment on a concrete pad adjacent to the tower. Power and fiber connections for the project will be provided through underground cables connected to existing power and fiber sources.

Comments: Comments on the proposed project must be sent to Steve Carp, Presidio Trust, 103 Montgomery Street, P.O. Box 29052, San Francisco, CA 94129–0052, and be received by November 15, 2016. A copy of T-Mobile's application is available upon request to the Presidio Trust.

FOR FURTHER INFORMATION CONTACT: Steve Carp, Presidio Trust, 103 Montgomery Street, P.O. Box 29052, San Francisco, CA 94129–0052. Email: *scarp@presidiotrust.gov.* Telephone: 415.561.5300.

Dated: October 6, 2016.

Andrea M. Andersen,

Acting General Counsel.

[FR Doc. 2016–24739 Filed 10–12–16; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32307; 812–14592]

Hartford Funds Exchange-Traded Trust, et al.; Notice of Application

October 6, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only

(''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure.

APPLICANTS: Hartford Funds Exchange-Traded Trust (the ''Trust''), a Delaware statutory trust that will be registered under the Act as an open-end management investment company with multiple series, Hartford Funds Management Company, LLC (the ''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, and Hartford Funds Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

FILING DATES: The application was filed on December 15, 2015, and amended on June 9, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 31, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: Edward P. Macdonald, Esq., 5 Radnor Corporate Center, 100 Matsonford Road, Suite 300, Radnor, PA 19087.

FOR FURTHER INFORMATION CONTACT: Michael S. Didiuk, Senior Counsel, at (202) 551–8639, or Holly Hunter-Ceci, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with a broker-dealer registered under the Exchange Act (together with any future distributor, the ''Distributor''). Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of

[1] Applicants request that the order apply to the Trust's initial index-based ETF series, as well as any additional series of the Trust, and any other open-end management investment company or existing or future series thereof that may be created in the future (each, included in the term ''Fund''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.

[2] Each Self-Indexing Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–24708 Filed 10–12–16; 8:45 am]

BILLING CODE 8011–01–P

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79069; File No. SR–BatsBZX–2016–26]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend BZX Rule 14.11(d) To Add the EURO STOXX 50 Volatility Futures to the Definition of Futures Reference Asset

October 7, 2016.

I. Introduction

On June 23, 2016, Bats BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend BZX Rule 14.11(d) in order to add the EURO STOXX 50 Volatility (''VSTOXX'') Futures (''VSTOXX Futures'') to the definition of Futures Reference Asset. The proposed rule change was published for comment in the **Federal Register** on July 12, 2016.[3] On August 23, 2016, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 30, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[6] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposal

The Exchange proposes to amend BZX Rule 14.11(d) to add VSTOXX Futures to the definition of Futures Reference Asset.[7] By adding VSTOXX Futures to the definition of Futures Reference Asset, the Exchange would be permitted to generically list and trade Futures-Linked Securities linked to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78236 (Jul. 6, 2016), 81 FR 45185 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 78640, 81 FR 59257 (Aug. 29, 2016).

[6] In Amendment No. 1, the Exchange: (a) Clarified that an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure of Futures-Linked Securities to comply with the continued listing requirements; (b) provided additional information regarding the comparability of the VSTOXX Futures and the CBOE Volatility Index (''VIX'') Futures currently included in the definition of Futures Reference Asset; (c) included additional background regarding the EURO STOXX 50 Index; (d) clarified that VSTOXX levels will be calculated by STOXX (as defined herein) and disseminated by major market data vendors such as Bloomberg and Thomson Reuters on a real-time basis throughout each trading day; and (e) made other grammatical corrections and typographical edits. Because the changes in Amendment No. 1 clarify certain statements in the proposal and do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment. Amendment No. 1, which amended and replaced the proposed rule change in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-batsbzx-2016-26/batsbzx201626-1.pdf.*

[7] As defined in BZX Rule 14.11(d), ''Futures Reference Asset'' currently includes an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) Futures.

VSTOXX Futures pursuant to Rule 19b–4(e) under the Act.[8]

The Exchange has made the following representations and statements in describing the proposal, including information and background relating to VSTOXX and VSTOXX Futures.[9]

A. Description of VSTOXX and VSTOXX Futures

According to the Exchange, the VSTOXX was originally developed in 2005 and is based on EURO STOXX 50 Index[10] real-time option prices that are listed on the Eurex Deutschland (''Eurex'').[11] The VSTOXX is designed to reflect market expectations of near-term to long-term volatility by measuring the square root of the implied variances across all options of a given time to expiration. The Exchange represents that the model for VSTOXX aims to make pure volatility tradable, *i.e.,* it should be possible to replicate the indices with an options portfolio that does not react to price fluctuations, but to changes in volatility only. The VSTOXX does not measure implied volatilities of at-the-money EURO STOXX 50 Index options, but the implied variance across all options of a given time to expiry.[12]

According to the Exchange, VSTOXX Futures are cash settled and trade between the hours of 7:30 a.m. and 10:30 p.m. Central European Time (2:30 a.m. and 5:30 p.m. Eastern Time).[13] The VSTOXX Futures contract value is 100 Euros per index point of the underlying and it is traded to two decimal places, with a minimum price change of 0.05 points (equivalent to a value of 5 Euros). The daily settlement price is determined during the closing auction of the respective futures contracts. The last trading day and final settlement day is 30 calendar days prior to the third Friday of the expiration month of the underlying options, which is usually the Wednesday prior to the second-to-last Friday of the respective maturity month.

B. Comparability of VSTOXX and VIX

According to the Exchange, the VSTOXX and VIX are nearly identical calculations of expected volatility in the EURO STOXX 50 Index and the S&P 500, respectively, based on pricing in the applicable options. The exchange represents that both processes involve screening of available option prices, followed by the construction of variance terms and then the subsequent weighting of those terms into the index values, and that the differences between the two processes are largely cosmetic. VSTOXX employs the following screens on EURO STOXX 50 Index options: (i) All option prices that are one-sided or without both a bid and ask are screened out; (ii) only options that are quoted within an established maximum spread are eligible for inclusion; and (iii) options that are too far out of the money (*i.e.,* that would change the index value less than 0.5 index points) are excluded. Similarly, VIX excludes options on the S&P 500 as follows: (a) All calls that have a bid price of zero are excluded, and, after two consecutive strikes have zero bid prices, no higher strikes are used; and (b) all puts that have a bid price of zero are excluded and after two consecutive strikes have zero bid prices, no lower strikes are used. The Exchange notes that, while these screens are not exactly the same, they are both designed to exclude options from their universe that do not have sufficient liquidity for the index to rely on their pricing for purposes of calculating volatility. In addition, after choosing the applicable options universe, both VSTOXX and VIX use essentially identical formulas for calculating variance across the included options. Finally, after determining the variance, both VSTOXX and VIX use a substantively identical formula for weighting each of the individual variances in order to calculate the respective index value.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of Section 6 of the Act[14] and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that VIX Futures are currently included as a Futures Reference Asset for Futures-Linked Securities.[17] The Commission also notes that, based on the Exchange's representations, the VSTOXX and VIX employ nearly identical calculations of expected volatility in the EURO STOXX 50 Index and the S&P 500, respectively. In addition, both VSTOXX and VIX use essentially identical formulas for calculating variance across the included options, and, after determining the variance, use a substantively identical formula for weighting each of the individual variances in order to calculate the respective index value. Given the similarities between VSTOXX and VIX, which was previously approved by the Commission as a Futures Reference Asset, the Commission believes that it is consistent with the Act for the Exchange

[8] 17 CFR 240.19b–4(e). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to section (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class, and the SRO has a surveillance program for the product class.

[9] The Commission notes that additional information regarding EURO STOXX 50, VSTOXX, and VSTOXX Futures, among other things, can be found in the Notice. *See* Notice, *supra* note 3.

[10] The EURO STOXX 50 Index includes 50 stocks that are among the largest free-float market capitalization stocks from 12 Eurozone countries: Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, and Spain. Additional details of the EURO STOXX 50 Index, including information relating to weighting and eligibility requirements for components, among other things, can be found in the Notice and Amendment No 1 to the proposed rule change. *See* Notice and Amendment No. 1, *supra* notes 3 and 6.

[11] The Exchange represents that Eurex is a member of the Intermarket Surveillance Group (''ISG'') and, accordingly, the Exchange may obtain information regarding trading in the underlying VSTOXX Futures contracts. For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[12] The VSTOXX is calculated using a series of sub-indices that are based on put and call options on the EURO STOXX 50 Index in eight expiry months, with a maximum time to expiry of two years, in order to bracket a 30-day calendar period. VSTOXX levels will be calculated by STOXX and disseminated by major market-data vendors such as Bloomberg and Thomson Reuters. Additional details of the VSTOXX, including information relating to calculation methodology, can be found in the Notice and Amendment No 1 to the proposed rule change. *See* Notice and Amendment No. 1, *supra* notes 3 and 6.

[13] The Exchange represents that additional information regarding the VSTOXX Futures can be found on the Eurex Web site. Additional details of the VSTOXX Futures, including monthly trading volume and open interest, among other things, also can be found in the Notice and Amendment No 1 to the proposed rule change. *See* Notice and Amendment No. 1, *supra* notes 3 and 6.

[14] 15 U.S.C. 78f.

[15] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 U.S.C. 78f(b)(5).

[17] *See supra* note 7.

to amend its listing standard to include VSTOXX as a Futures Reference Asset.

In addition, the Commission notes that, notwithstanding the addition of VSTOXX Futures to the definition of Futures Reference Asset, the existing initial and continued listing criteria applicable to Linked-Securities, generally, and Futures-Linked Securities, specifically, would continue to apply. For example, the Exchange represents that any Futures-Linked Securities linked to VSTOXX Futures would be required to meet both the initial and continued listing standards under BZX Rule 14.11(d)(2)(K)(iv)(b) and (c) or be subject to delisting or removal proceedings. These initial and continued listing standards require, among other things: (i) The value of the Futures Reference Asset be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session; (ii) for Futures-Linked Securities that are periodically redeemable, the Intraday Indicative Value of the securities be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session; (iii) the aggregate market value or the principal amount of the Futures-Linked Securities be at least $400,000; and (iv) the value of the VSTOXX Futures be calculated and available. In addition, any Futures-Linked Securities linked to VSTOXX Futures also would be required to meet the listing standards applicable to all Linked Securities under BZX Rule 14.11(d)(2). The Exchange represents that any securities it would list and trade pursuant to amended BZX Rule 14.11(d) would continue to comply with all Exchange rules applicable to the listing and trading of Linked Securities.

Further, the Exchange represents that its existing surveillance procedures are adequate to continue to properly monitor the trading of the Futures-Linked Securities linked to VSTOXX Futures in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange stated that it intends to utilize its existing surveillance procedures applicable to derivative products, which includes Linked Securities, to monitor trading in the Futures-Linked Securities. The Commission notes that Eurex, on which VSTOXX Futures trade, is a member of ISG, and the Exchange represents that it may obtain information regarding trading in the underlying VSTOXX Futures.

The Commission further notes that the issuer of a series of Linked Securities is and will continue to be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Linked Securities, as provided under BZX Rule 14.11(d)(2)(F). Moreover, the Exchange represents that prior to listing Futures-Linked Securities linked to VSTOXX Futures pursuant to BZX Rule 14.11(c)(2)(K)(iv), an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure of the Futures-Linked Securities to comply with the continued listing requirements.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act [18] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–BatsBZX–2016–26), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24776 Filed 10–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79060; File No. SR–ISEGemini–2016–11]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to a Proposal To Amend a Current Billing Practice With Respect to Billing Disputes

October 6, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 2016, ISE Gemini, LLC (''ISE Gemini'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend a current billing practice with respect to billing disputes.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees to change the timeframe within which Members must dispute billing. Today, ISE Gemini Members must submit all disputes no later than ninety calendar days after receipt of an Exchange invoice. After ninety calendar days, all fees assessed by the Exchange are considered final. The Exchange is proposing to amend the policy from ninety to sixty days to submit a dispute. Today, the NASDAQ PHLX LLC (''Phlx''), NASDAQ BX, Inc. (''BX''), and The NASDAQ Options Market LLC (''NOM'') all have a sixty day timeframe within which to dispute option invoices.[3]

The Exchange provides Members with both daily and monthly fee reports and thus believes Members should be aware of any potential billing errors within sixty calendar days of receiving an invoice. Requiring that Members dispute an invoice within this time period will encourage them to promptly review their invoices so that any disputed charges can be addressed in a

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx's Pricing Schedule. *See also* NOM and BX Rules at Chapter XV, Section 7.

timely manner while the information and data underlying those charges (*e.g.* applicable fees and order information) is still easily and readily available. This practice will avoid issues that may arise when Members do not dispute an invoice in a timely manner, and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes. The Exchange notes that this type of provision is common among many other exchanges, which require that Members dispute invoices within sixty days.

Billing disputes must continue to be submitted to the Exchange in writing,[4] and must be accompanied by supporting documentation. The Exchange believes that this requirement, which is also similar to requirements of other exchanges,[5] will further streamline the billing dispute process.

The Exchange believes that this practice will conserve Exchange resources which are expended when untimely billing disputes require staff to research applicable fees and order information beyond two months after the transaction occurred. Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the untimely review of billing disputes which divert staff resources away from the Exchange's regulatory and business purposes.

The sixty days would first apply to invoices related to transactional billing in November 2016 and would apply thereafter.[6] The Exchange proposes to apply the billing policy to all charges reflected in its Schedule of Fees.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing a uniform practice for disputing fees.

The Exchange believes the requirement that all billing disputes must be submitted in writing, and with supporting documentation, within sixty calendar days from receipt of the invoice is reasonable in the public interest because the Exchange provides ample tools to properly and swiftly monitor and account for various charges incurred in a given month. Moreover, the proposed billing dispute language, which will lower the Exchange's administrative burden, is substantially similar to billing dispute language adopted by other exchanges.[9] Also, the Exchange's administrative costs would be lowered as a result of this policy because staff resources would not be diverted to review untimely requests regarding billing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The billing policy would apply uniformly to all ISE Gemini Members. The policy is similar to rules adopted by other options exchanges.[10]

Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the untimely review of billing disputes which divert staff resources away from the Exchange's regulatory and business purposes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISEGemini–2016–11 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISEGemini–2016–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

[4] The Exchange invoice specifies contact information for billing inquiries.

[5] *See* note 3 above.

[6] This proposal would not apply to invoices related to October 2016 billing.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* note 3 above.

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

available publicly. All submissions should refer to File Number SR–ISEGemini–2016–11 and should be submitted on or before November 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Brent J. Fields,

Secretary.

[FR Doc. 2016–24697 Filed 10–12–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79064; File No. SR–BatsBZX–2016–64]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees To Make a Clarifying Change Related to the Tape B Quoting Tier

October 6, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2016, Bats BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[3] and non-members of the Exchange pursuant to BZX Rules 15.1(a) and (c) in order to make a clarifying change related to the Tape B Quoting Tier.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to make clear that the additional rebate per share for orders in Tape B securities associated with meeting the Tape B Quoting Tier (the ''Tape B Rebate'') does not apply to the rebates set forth in footnote 14 part A of the fee schedule (the ''LMM Incentive Program''). Specifically, this means that a Member does not receive the Tape B Rebate on top of the rebate that the LMM receives under the LMM Incentive Program for securities in which they are the LMM.[4] The Exchange notes this clarification applies only to the rebates for securities in which a Member receives rebates under the LMM Incentive Program and that enrollment in LMP Securities is available to all Members, including LMMs, and Members that act as an LMM are eligible to receive the Tape B Rebate for securities in which the Member is not the LMM.

The Exchange proposes to implement these amendments to its fee schedule effective immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[5] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) and 6(b)(5) of the Act,[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange notes that it is not proposing to make any changes to the rebates or fees that it currently charges. As such, the Exchange believes that the change is reasonable, fair and equitable, and non-discriminatory because it is non-substantive and is designed to make sure that the fee schedule is as clear and easily understandable as possible.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange does not believe that the changes burden competition, as this change is intended to make the Exchange's fee schedule as clear and easily understandable as possible.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[4] As provided in the fee schedule, the Exchange notes that to the extent a Member qualifies for higher rebates than those provided by a tier for which such Member qualifies, such as the LMM Incentive Program, the higher rebates shall apply.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File No. SR–BatsBZX–2016–64 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–BatsBZX–2016–64. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsBZX–2016–64 and should be submitted on or before November 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2016–24701 Filed 10–12–16; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79063; File No. SR–NYSEArca–2016–132]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

October 6, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 23, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective October 1, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to cap the Lead Market Maker (''LMM'') Rights Fees (''Rights Fee'') charged for lower-volume issues to encourage OTP Firms acting as LMMs to add more such issues to their allocation. The Exchange proposes to implement the fee change effective October 1, 2016.

The LMM Rights Fee is charged ''on a per issue basis to the OTP Firm acting as LMM in the issue.'' [4] Currently, the Exchange charges a Rights Fee on each issue in a LMM's allocation, with rates based on the Average National Daily Customer Contracts (''CADV''). The monthly Rights Fee ranges from $25 per month to $3,000 per month. Under the current Fee Schedule, the more active an issue is, the higher the Rights Fee, as set forth below:

Average national daily customer contracts	Monthly issue fee
0 to 100	$25
101 to 1,000	35
1,001 to 2,000	75
2,001 to 5,000	200
5,001 to 15,000	750
15,001 to 100,000	1,500
Over 100,000	3,000

Earlier this year, the Exchange introduced an LMM Rights Fee Discount applicable to each issue in an LMM's appointment with a CADV above 5,000 based on the amount of monthly (i) total electronic volume and/or (ii) total posted volume executed by an LMM in the Market Maker range relative to other Marker Makers appointed in that issue (the ''Discount'').[5] This Discount was designed to incent LMMs that already transact a significant amount of business on the Exchange and trade competitively in their issues to increase their trading and achieve one of the Discounts as well as to incent LMMs to apply for new issue allocation. The Exchange now proposes a modification to its Fee schedule that is designed to encourage LMMs to add lower-volume issues to their appointments.

Specifically, the Exchange proposes to cap at 50 issues the Rights Fee it charges OTP Firms for issues with a CADV of 0 to 100 contracts (''First Tier''). The

[4] *See* Fee Schedule, Endnote 2, *available here,https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[5] *See* Securities and Exchange Act Release No. 77885 (May 23, 2016), 81 FR 33716 (May 23 [sic], 2016) (SR–NYSEArca–2016–75).

Exchange would not charge for any First Tier issues in the LMM's allocation that exceed 50 issues. The Exchange also proposes to cap at 100 issues the Rights Fee it charges for issues with a CADV of 101 to 1000 (''Second Tier''). The Exchange would not charge for any Second Tier issues in the LMM's allocation that exceed 100 issues. The practical impact of this cap is that the maximum LMM Rights Fee charged to an OTP Firm for issues trading in the First Tier would be $1,250 (*i.e.,* $25 × 50) and the maximum Rights Fee charged to an OTP Firm for issues trading in the Second Tier would be $3,500 (*i.e.,* $35 × 100). For example, an OTP Firm acting as an LMM with 55 issues that trade in the First Tier, and another 130 that trade in the Second Tier, would be charged an LMM Rights fee of $4,750 ($1,250 (the max charged for First Tier issues) plus $3,500 (the max charged for Second Tier issues).

The Exchange is setting the caps at different amounts for the First and Second Tiers because of the difference in the universe of available issues in each of these Tiers. The Exchange proposes a higher issue cap for options trading in the Second Tiers because there are more issues available in this Tier than in the First Tier and these issues are also more desirable because they trade more.[6]

The Exchange believes that the proposed caps to the LMM Rights Fee would increase interest of OTP Firms acting as LMMs in adding to their allocation issues in the First and Second Tiers.

The Exchange notes that the proposed caps to the Rights Fees would not hinder an LMM's ability to achieve any of the existing discounts applicable to the Rights Fees; rather, to the extent that the caps encourage an OTP Firm acting as an LMM to increase the number of issues in its allocation, the proposal may increase an LMM's chances of achieving existing discounts (*i.e.,* to achieve the 50% discount on the Rights Fee an LMM needs to trade 10,000 electronic contracts ADV in its appointment).

The Exchange is not proposing any other changes to the Rights Fee at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed caps on the LMM Rights Fees for the First and Second Tier issues are reasonable, equitable and not unfairly discriminatory for a number of reasons. First, all LMMs trading First Tier issues with similar CADV levels would benefit from the proposed Rights Fee cap and have the same incentive to add the affected issues to their allocation. Second, the proposed Rights Fees caps are designed to encourage OTP Firms acting as LMMs to add lower-volume issues to their appointments, which would provide greater opportunities for OTP Firms to achieve volume incentives on the Exchange without adding to their Rights Fees. In turn, the proposed caps may reduce the overhead costs of OTP Firms that are most actively trading in the affected issues, which reduced costs would enhance the ability of LMMs to provide liquidity to the benefit of all market participants. Further, the Exchange believes that having a broader range of products available on the Exchange would benefit all market participants by increasing liquidity on the Exchange and offering more opportunities to trade.

Finally, the Exchange also believes that proposed caps to the Rights Fees on the First and Second Tiers are not unfairly discriminatory because they apply solely to LMMs (non-LMMs are not subject to this Fee) and would not disadvantage Market Makers.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed caps on Rights Fees for the lowest-volume issues would not impose an unfair burden on competition because the cap are designed to encourage more OTP Firms acting as LMMs to add such issues to their allocation, which would increase liquidity and offer more trading opportunities to market participants.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [10] of the Act and subparagraph (f)(2) of Rule 19b–4 [11] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–132 on the subject line.

[6] As of August 10, 2016, the Exchange had 647 issues listed in the First Tier and 985 issues in the Second Tier.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(2)(B).

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–132. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–132, and should be submitted on or before November 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Brent J. Fields,

Secretary.

[FR Doc. 2016–24700 Filed 10–12–16; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79061; File No. SR–ISE–2016–23]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend a Current Billing Practice With Respect to Billing Disputes

October 6, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 2016, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal to amend a current billing practice with respect to billing disputes.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees to change the timeframe within which Members must dispute billing. Today, ISE Members must submit all disputes no later than ninety calendar days after receipt of an Exchange invoice. After ninety calendar days, all fees assessed by the Exchange are considered final. The Exchange is proposing to amend the policy from ninety to sixty days to submit a dispute. Today, the NASDAQ PHLX LLC (''Phlx''), NASDAQ BX, Inc. (''BX'') and The NASDAQ Options Market LLC (''NOM'') all have a sixty day timeframe within which to dispute option invoices.[3]

The Exchange provides Members with both daily and monthly fee reports and thus believes Members should be aware of any potential billing errors within sixty calendar days of receiving an invoice. Requiring that Members dispute an invoice within this time period will encourage them to promptly review their invoices so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (*e.g.* applicable fees and order information) is still easily and readily available. This practice will avoid issues that may arise when Members do not dispute an invoice in a timely manner, and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes. The Exchange notes that this type of provision is common among many other exchanges, which require that Members dispute invoices within sixty days.

Billing disputes must continue to be submitted to the Exchange in writing,[4] and must be accompanied by supporting documentation. The Exchange believes that this requirement, which is also similar to requirements of other exchanges,[5] will further streamline the billing dispute process.

The Exchange believes that this practice will conserve Exchange resources which are expended when untimely billing disputes require staff to research applicable fees and order information beyond two months after the transaction occurred. Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the untimely review of billing disputes which divert staff resources away from the Exchange's regulatory and business purposes.

The Exchange is also adding the word ''calendar'' before days to specifically

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx's Pricing Schedule. *See also* NOM and BX Rules at Chapter XV, Section 7.

[4] The Exchange invoice specifies contact information for billing inquiries.

[5] *See* note 3 above.

state that the days are calendar days to avoid confusion. Today, ISE uses calendar days, so this is not a substantive change.

The sixty days would first apply to invoices related to transactional billing in November 2016 and would apply thereafter.[6] The Exchange proposes to apply the billing policy to all charges reflected in its Schedule of Fees.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing a uniform practice for disputing fees.

The Exchange believes the requirement that all billing disputes must be submitted in writing, and with supporting documentation, within sixty calendar days from receipt of the invoice is reasonable in the public interest because the Exchange provides ample tools to properly and swiftly monitor and account for various charges incurred in a given month. Moreover, the proposed billing dispute language, which will lower the Exchange's administrative burden, is substantially similar to billing dispute language adopted by other exchanges.[9] Also, the Exchange's administrative costs would be lowered as a result of this policy because staff resources would not be diverted to review untimely requests regarding billing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The billing policy would apply uniformly to all ISE Members. The policy is similar to rules adopted by other options exchanges.[10]

Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the untimely review of billing disputes which divert staff resources away from the Exchange's regulatory and business purposes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2016–23 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2016–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2016–23 and should be submitted on or before November 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Brent J. Fields,

Secretary.

[FR Doc. 2016–24698 Filed 10–12–16; 8:45 am]

BILLING CODE 8011–01–P

[6] This proposal would not apply to invoices related to October 2016 billing.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* note 3 above.

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79062; File No. SR–NYSEArca–2016–64]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Shares of the AdvisorShares KIM Korea Equity ETF

October 6, 2016.

I. Introduction

On May 2, 2016, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the AdvisorShares KIM Korea Equity ETF under NYSE Arca Equities Rule 8.600. On May 13, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission published notice of the proposed rule change, as modified by Amendment No. 1, in the **Federal Register** on May 23, 2016.[4] On May 23, 2016, the Exchange submitted Amendment No. 2 to the proposed rule change.[5] On July 7, 2016, pursuant to Section 19(b)(2) of the Act,[6] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[7] On August 18, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [8] to determine whether to approve or disapprove the proposed rule change.[9] The Commission received no comments on the proposed rule change. On September 28, 2016, the Exchange withdrew the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Brent J. Fields,

Secretary.

[FR Doc. 2016–24699 Filed 10–12–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nysearca-2016-64/nysearca201664-1.pdf.*

[4] *See* Securities Exchange Act Release No. 34–77847 (May 17, 2016), 81 FR 32364.

[5] Amendment No. 2 replaced and superseded the original filing in its entirety. Amendment No. 2 is available at *https://www.sec.gov/comments/sr-nysearca-2016-64/nysearca201664-2.pdf.*

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 78240, 81 FR 45332 (July 13, 2016).

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 78614, 81 FR 57981 (August 24, 2016).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79071; File No. SR–NYSE–2016–64]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Supplementary Material .20 to Rule 103

October 7, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 22, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .20 to Rule 103 (''NYSE Rule 103.20''), to reduce the Minimum Net Liquid Assets requirement for Designated Market Maker (''DMM'') units. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 103.20, which sets forth the net liquid assets requirements for a member organization that operates as a DMM unit on the Exchange,[4] to reduce the Minimum Net Liquid Assets requirement for DMM units.

Current Rule

Rule 103.20 sets forth a Net Liquid Assets requirement for each DMM unit [5] in addition to the SEC Net Capital Rule [6] minimum net capital requirement applicable to market-making activities. The purpose of the Exchange's requirement is to reasonably assure that each DMM unit maintains sufficient liquidity to carry out its obligation to maintain a fair and orderly market in its assigned securities in times of market stress. The formula for the current net liquid assets requirement was established in July 2011, which resulted in the aggregate net liquid assets of all DMM units equaling at least $125 million.[7]

Under current Rule 103.20(b), each DMM unit must maintain or have allocated to it Net Liquid Assets that are the greater of (1) $1 million, or (2) $125,000 for each one-tenth of one percent (0.1%) of Exchange transaction dollar volume [8] in its registered securities. A DMM unit must inform the Exchange immediately whenever the DMM unit is unable to comply with these requirements.[9]

Current Rule 103.20(a) defines ''Net Liquid Assets'' as the sum of (A) ''Excess Net Capital'' and (B) ''Liquidity'' dedicated to the DMM unit. Excess Net Capital has the same meaning as the term excess net capital as computed in accordance with the

[4] Pursuant to Rule 2(j), a DMM unit is defined as a member organization or unit within a member organization that has been approved to act as a DMM unit under Rule 98. Pursuant to Rule 2(i), a DMM is defined as an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. All references to rules herein are to NYSE rules, unless otherwise noted.

[5] All DMMs on the Exchange are required to comply with Rule 104.

[6] *See* 17 CFR 240.15c3–1.

[7] *See* Securities Exchange Act Release No. 64918 (July 19, 2011), 76 FR 44390 (July 25, 2011) (SR–NYSE–2011–35) (''Release No. 64918'').

[8] The term ''Exchange transaction dollar volume'' means the most recent Statistical Data, calculated and provided by the NYSE on a monthly basis. *See* Rule 103.20(a)(4).

[9] *See* Rule 103.20(c)(1)(A).

SEC Net Capital Rule,[10] which means the amount identified as item number 3770 of SEC Form X–17A–5 (''FOCUS Report''), except for DMM units that compute net capital under the alternative standard, for which it would mean item number 3910 of the FOCUS Report. Liquidity is defined as undrawn or actual borrowings that are dedicated to the DMM unit's business, as specified in Rule 103.20(a)(3)(A)–(C).

If two or more DMM units are associated with each other and deal for the same DMM unit account, then the Net Liquid Assets requirements of Rule 103.20 applies to such DMM units as one unit, rather than to each DMM unit individually. Any joint account must be approved by the Exchange.[11] The Exchange may allow a DMM unit to operate despite noncompliance with the provisions of the minimum requirements of Rule 103.20, for up to five business days from the date the DMM notifies the Exchange of such condition.[12]

Background and Proposed Rule Change

On July 25, 2006, the SEC approved amendments to the predecessor of current Rule 103.20 that set the Net Liquid Asset requirement applicable to specialist member organizations at $1 billion.[13] In February 2008, based on significant changes in the NYSE's market structure resulting in reduced specialist participation, position levels, and performance during periods of high market volatility, this amount was reduced to $250 million.[14] In July 2011, once again relying on significant changes in the NYSE's market structure as well as market-wide regulatory and trading developments and trends, the Net Liquid Asset requirement in Rule 103.20 was reduced to the current $125 million.[15]

A determination of whether the Net Liquid Assets requirement will be adequate to support the liquidity needs of DMM units to perform their obligations to the market during periods of market stress involves consideration and assessment of many factors, including market structure developments, market fragmentation, DMM unit end-of-day inventory positions and position duration, and the use of technology to manage market volatility. Since July 2011, the Exchange has continued to regularly assess these factors.

Market-wide developments since 2011 have continued to dampen volatility and reduce DMM unit risk levels. Specifically, the implementation in April 2013 of market-wide volatility controls as part of the Regulation NMS Plan to Address Extraordinary Market Volatility (''Limit Up/Limit Down'') significantly mitigated industry-wide risks by limiting single-stock and market-wide volatility throughout the trading day.[16] Additional initiatives since 2011, including enhanced technology resulting in reduced trading latency levels, clearing organization risk control enhancements, tighter percentage triggers on market-wide circuit breakers,[17] pre-trade risk controls to prevent the routing of orders that exceed credit or capital thresholds (*i.e.,* SEC Rule 15c3–5,[18] the ''Market Access Rule''), and clearly defined Clearly Erroneous Execution parameters and processes,[19] have all contributed to reducing the potential for significant and/or rapid movements in the market and to help DMM units satisfy their obligation to maintain an orderly market in assigned securities in times of market stress.

Since 2011, market fragmentation has increased the amount of off-exchange trading in NYSE-listed securities. Trading on the Trade Reporting Facility (''TRF'') in NYSE-listed securities increased from 29.8% year-to-date between January–May 2011 to 34.7% year-to-date between January–May 2016. There are currently 13 competing exchanges trading NYSE-listed securities and one-third of NYSE consolidated volume is traded off-exchange on over 30 dark pools and over 200 upstairs trading desks.

The net liquid asset requirement should be reasonably related to the amount of trading that DMM units transact within the NYSE's market share and dollar value traded. The Exchange believes that as NYSE share and dollar volume has declined, the amount of net liquid assets required to meet the DMM unit's obligations should similarly decline. The Exchange notes that both the overall consolidated Tape A volume as well as the Exchange's average daily volume of shares traded have declined since 2011 (6% and 13% YTD, respectively), therefore resulting in less trading both market-wide and at the Exchange in the securities assigned to DMMs.

The growth in NYSE's Supplemental Liquidity Provider (''SLP'') program, implemented in October 2008 and made permanent in July 2015,[20] has increased liquidity provider participation across a broader group of market participants, thereby also helping to reduce DMM risk. Today, around one-third of liquidity provider participation comes from nine firms participating in the SLP program.

The disparity between the current capital requirement and DMM gross inventory levels is also significant. End-of-day DMM average gross inventory positions have declined 27% from $74 million in the January–June 2011 period to $54 million in the January–June 2016 period, reducing overnight risk exposure. The current $125 million capital requirement is 2.3 times greater than the gross inventory level of $53 million (long market value plus short market value) and 34 times greater than the average net inventory level of $3.6 million (long market value—short market value).

DMM units are also putting fewer dollars at risk on a given trade, and less capital is needed to support the resultant positions. This trend is largely the result of the DMM units' increased use of algorithms to trade in smaller order sizes to reduce risk exposure. The industry's increased use of algorithms to trade in small order sizes to reduce risk exposure has resulted in a 14% decline in the average NYSE intraday trade size from 2011 to 2016 year-to-date through May 2016, resulting in fewer DMM shares at risk on a given trade.

Moreover, DMM liquidity provider and other payments to DMMs have increased since 2011. In particular, DMM rebates per share have increased from $0.0015, $0.0025 and $0.0030 in mid-2011 to $0.0027, $0.0031, $0.0034 today. Further, quote market data revenue payments have been expanded to cover less-active securities under 1.5 million in consolidated volume versus 1 million in consolidated volume in 2011, and monthly flat payments have been introduced between $100 to $500 per security for less active securities under 1.5 million in consolidated volume. By reducing the DMM's costs per share traded, the Exchange believes that higher trading rebates and other

[10] *See* note 6 *supra.*

[11] *See* Rule 103.20(b)(3).

[12] *See id.* at (c)(2).

[13] *See* Securities Exchange Act Release No. 54205 (July 25, 2006), 71 FR 43260 (July 31, 2006) (SR–NYSE–2005–38) (approving amendments to NYSE Rules 104 and 123E (''Specialist Combination Review Policy'') that changed the capital requirements of specialist organizations). *See also* NYSE Information Memo 06–56 (August 2, 2006).

[14] *See* Securities Exchange Act Release No. 57272 (February 5, 2008), 73 FR 8098 (February 12, 2008) (SR–NYSE–2007–101).

[15] *See* note 7 *supra.*

[16] *See* Securities Exchange Act Release No. 77679 (April 21, 2016), 81 FR 24908 (April 27, 2016) (File No. 4–631) (Order approving 10th Amendment to the Limit Up Limit Down Plan).

[17] *See* Rule 80B.

[18] *See* 17 CFR 240.15c3–5.

[19] *See* Rule 128.

[20] *See* Securities Exchange Act Release No. 75578 (July 31, 2015), 80 FR 47008 (August 6, 2015) (SR–NYSE–2015–26).

payments to DMMs have reduced overall DMM trading risk.

Further, the DMM units' increasing use of trading technology and faster NYSE execution speeds enable DMMs to reduce order exposure time and better manage the risks of positions held. Faster NYSE executions speeds and DMM units' use of algorithms allow them to adjust positions quickly in response to changing market dynamics. The NYSE has also reduced the time needed to incorporate market information into quotes, thereby allowing for better risk controls mechanisms by DMMs. Median order-to-acknowledgement latency for NYSE gateways declined 81% between June 2011 and June 2016.[21]

Based on the foregoing, the Exchange believes that it is appropriate to reduce the Net Liquid Assets requirement for all DMM units by an additional 40% to $75 million.

The Exchange notes that the Exchange and FINRA will continue to assess DMM capital requirements and monitor capital positions on a daily basis.

The Exchange will notify DMM units of the implementation date of this rule change via a Member Education Bulletin.

The proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that DMM units would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system by reducing the burden on DMM units to maintain net liquidity while still reasonably ensuring that DMM units have sufficient liquidity to carry out their obligations to maintain an orderly market in their assigned securities in times of market stress. In this regard, the Exchange notes that overall DMM unit risk levels have continued to decline due to, among other things, implementation of market-wide volatility controls (*e.g.,* Limit Up/Limit Down price controls), enhanced technology resulting in reduced trading latency levels, clearing organization risk control enhancements, tighter percentage triggers on market-wide circuit breakers, pre-trade risk controls (*i.e.,* the Market Access Rule), and clearly defined Clearly Erroneous Execution parameters and processes. These initiatives have contributed to reducing the potential for significant and/or rapid movements in the market and provide support to DMM units in satisfying their obligation to maintain an orderly market in assigned securities in times of market stress. The Exchange further believes that continued market fragmentation, the decline in the average value of DMM units' end-of-day position inventories and the shorter duration of positions, lower per share trading costs and improved technology to manage market risk also support the proposed rule change.

The Exchange further believes that the proposed change would protect investors and the public interest by reducing existing barriers to entry for new DMM units and mitigating the potential loss of existing DMM units. Stabilizing and increasing the pool of DMM units with a more efficient financial structure would be beneficial to the Exchange and would also enhance market quality and thereby support investor protection and public interest goals. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to amend the structure of DMM unit financial requirements. This proposed change would eliminate a potential barrier to entry for new DMM units interested in operating on both markets, thereby promoting competition.

The Exchange notes that market makers and traders on other U.S. equity exchanges are not subject to net capital requirements beyond those required by the SEC Net Capital Rule. Nonetheless, DMM units have unique affirmative obligations and the Exchange continues to believe that it is appropriate that their financial requirements be higher than other market participants. The proposal would support competition by making DMM unit financial requirements more manageable for member organizations, including both existing and potential future DMM units, and would thereby promote greater interest in seeking DMM unit appointments on the Exchange.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of

[21] The Exchange notes that multi-asset market makers mitigate risk by hedging between different products. Technology advances like use of microwave towers has reduced data transmission times helping firms to better manage risks and hedge price differences between equities/ETFs generally trading in the New York area and futures generally trading in the Chicago area.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [26] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[27] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [28] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–64 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2016–64. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–64 and should be submitted on or before November 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24775 Filed 10–12–16; 8:45 am]

BILLING CODE 8011–01–P

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

[28] 15 U.S.C. 78s(b)(2)(B).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79059; File No. SR–ISEMercury–2016–17]

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend a Current Billing Practice With Respect to Billing Disputes

October 6, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 2016, ISE Mercury, LLC (''ISE Mercury'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend a current billing practice with respect to billing disputes.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees to change the timeframe within which Members must dispute billing. Today, ISE Mercury Members must submit all disputes no later than ninety calendar days after receipt of an Exchange invoice. After ninety calendar days, all fees assessed by the Exchange are considered final. The Exchange is proposing to amend the policy from ninety to sixty days to submit a dispute. Today, the NASDAQ PHLX LLC (''Phlx''), NASDAQ BX, Inc. (''BX'') and The NASDAQ Options Market LLC (''NOM'') all have a sixty day timeframe within which to dispute option invoices.[3]

The Exchange provides Members with both daily and monthly fee reports and thus believes Members should be aware of any potential billing errors within sixty calendar days of receiving an invoice. Requiring that Members dispute an invoice within this time period will encourage them to promptly review their invoices so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (*e.g.* applicable fees and order information) is still easily and readily available. This

[3] *See* Phlx's Pricing Schedule. *See also* NOM and BX Rules at Chapter XV, Section 7.

practice will avoid issues that may arise when Members do not dispute an invoice in a timely manner, and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes. The Exchange notes that this type of provision is common among many other exchanges, which require that Members dispute invoices within sixty days.

Billing disputes must continue to be submitted to the Exchange in writing,[4] and must be accompanied by supporting documentation. The Exchange believes that this requirement, which is also similar to requirements of other exchanges,[5] will further streamline the billing dispute process.

The Exchange believes that this practice will conserve Exchange resources which are expended when untimely billing disputes require staff to research applicable fees and order information beyond two months after the transaction occurred. Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the untimely review of billing disputes which divert staff resources away from the Exchange's regulatory and business purposes.

The sixty days would first apply to invoices related to transactional billing in November 2016 and would apply thereafter.[6] The Exchange proposes to apply the billing policy to all charges reflected in its Schedule of Fees.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing a uniform practice for disputing fees.

The Exchange believes the requirement that all billing disputes must be submitted in writing, and with supporting documentation, within sixty calendar days from receipt of the invoice is reasonable in the public interest because the Exchange provides ample tools to properly and swiftly monitor and account for various charges incurred in a given month. Moreover, the proposed billing dispute language, which will lower the Exchange's administrative burden, is substantially similar to billing dispute language adopted by other exchanges.[9] Also, the Exchange's administrative costs would be lowered as a result of this policy because staff resources would not be diverted to review untimely requests regarding billing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The billing policy would apply uniformly to all ISE Mercury Members. The policy is similar to rules adopted by other options exchanges.[10]

Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the untimely review of billing disputes which divert staff resources away from the Exchange's regulatory and business purposes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISEMercury–2016–17 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISEMercury–2016–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISEMercury–2016–17 and should be

[4] The Exchange invoice specifies contact information for billing inquiries.

[5] *See* note 3 above.

[6] This proposal would not apply to invoices related to October 2016 billing.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* note 3 above.

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

submitted on or before November 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Brent J. Fields,

Secretary.

[FR Doc. 2016–24696 Filed 10–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79057; File No. 4–705]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective a Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc., Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., and Bats EDGX Exchange, Inc.

October 6, 2016.

Notice is hereby given that the Securities and Exchange Commission (''Commission'') has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] approving and declaring effective a plan for allocating regulatory responsibility (''Plan'') filed on September 30, 2016, pursuant to Rule 17d–2 of the Act,[2] by the Financial Industry Regulatory Authority, Inc. (''FINRA''), Bats BZX Exchange, Inc. (''BZX''), Bats BYX Exchange, Inc. (''BYX''), Bats EDGA Exchange, Inc. (''EDGA''), and Bats EDGX Exchange, Inc. (''EDGX'') (each, a ''Participating Organization,'' or ''Bats Exchange,'' and together, the ''Participating Organizations,'' ''the Bats Exchanges,'' or the ''Parties''). The Plan replaces and supersedes the agreement between FINRA and BZX dated August 25, 2008;[3] the agreement between FINRA and BYX dated September 3, 2010;[4] the agreement between FINRA and EDGX dated March 31, 2010;[5] and the agreement between FINRA and EDGA dated March 31, 2010.[6]

I. Introduction

Section 19(g)(1) of the Securities Exchange Act of 1934 (''Act''),[7] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[8] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[9] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[10] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[11] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[12] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d– does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[13] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Plan

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are common members of a Bats Exchange and FINRA.[14] Pursuant to the proposed 17d–2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations. The Plan replaces and supersedes the individual agreements between FINRA and each Bats Exchange[15] and is intended to reduce the administrative burden associated with maintaining four separate plans.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] *See* Securities Exchange Act Release No. 58563 (September 17, 2008), 73 FR 55180 (September 24, 2008) (File No. 4–569) (notice of filing of proposed plan). *See also* Securities Exchange Act Release No. 58818 (October 20, 2008), 73 FR 63752 (October 27, 2008) (File No. 4–569) (order approving proposed plan).

[4] *See* Securities Exchange Act Release No. 62935 (September 17, 2010), 75 FR 57998 (September 23, 2010) (File No. 4–613) (notice of filing of proposed plan). *See also* Securities Exchange Act Release No. 63102 (October 14, 2010), 75 FR 64765 (October 20, 2010) (File No. 4–613) (order approving proposed plan).

[5] *See* Securities Exchange Act Release No. 61861 (April 7, 2010), 75 FR 18920 (April 13, 2010) (File No. 4–598) (notice of filing of proposed plan). *See also* Securities Exchange Act Release No. 62079 (May 11, 2010), 75 FR 28080 (May 19, 2010) (File No. 4–598) (order approving proposed plan).

[6] *See* Securities Exchange Act Release No. 61860 (April 7, 2010), 75 FR 18915 (April 13, 2010) (File No. 4–597) (notice of filing of proposed plan). *See also* Securities Exchange Act Release No. 62078 (May 11, 2010), 75 FR 28078 (May 19, 2010) (File No. 4–597) (order approving proposed plan).

[7] 15 U.S.C. 78s(g)(1).

[8] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[9] 15 U.S.C. 78q(d)(1).

[10] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[11] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[12] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[13] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[14] *See* Paragraph 1(c) of the proposed 17d–2 Plan.

[15] *See supra* notes 3–6.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the ''Bats BZX Exchange, Inc. (''BZX''), Bats BYX Exchange, Inc. (''BYX''), Bats EDGA Exchange, Inc. (''EDGA''), and Bats EDGX Exchange, Inc. (''EDGX'') Rules Certification for 17d–2 Agreement with FINRA,'' referred to herein as the ''Certification'') that lists every rule of the Bats Exchanges, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to members of the Bats Exchanges that are also members of FINRA and the associated persons therewith (''Common Members'').

Specifically, under the 17d–2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Common Members with the rules of each Bats Exchange that are substantially similar to the applicable rules of FINRA,[16] as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification (''Common Rules''). In the event that a Common Member is the subject of an investigation relating to a transaction on a Bats Exchange, the plan acknowledges that the Bats Exchange may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.[17]

Under the Plan, each Bats Exchange would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving the Bats Exchange's own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any rules of the Bats Exchange that are not Common Rules, except for the Bats Exchanges rules for any broker-dealer subsidiary of the Bats Exchanges' parent company, Bats Global Markets, Inc.[18] Apparent violations of any the Bats Exchanges rules by any broker-dealer subsidiary of Bats Global Markets will be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA.[19]

The text of the proposed 17d–2 Plan is as follows:

AGREEMENT BETWEEN FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., BATS BZX EXCHANGE, INC., BATS BYX EXCHANGE, INC., BATS EDGA EXCHANGE, INC., AND BATS EDGX EXCHANGE, INC. PURSUANT TO RULE 17d–2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. (''FINRA''), Bats BZX Exchange, Inc. (''BZX''), Bats BYX Exchange, Inc. (''BYX''), Bats EDGA Exchange, Inc. (''EDGA''), and Bats EDGX Exchange, Inc. (''EDGX'') (collectively, the ''Bats Exchanges'' and each a ''Bats Exchange'') is made this 30th day of September, 2016 (the ''Agreement''), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 17d–2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and the Bats Exchanges may be referred to individually as a ''party'' and together as the ''parties.'' Upon approval by the Securities and Exchange Commission (''Commission'' or ''SEC'') this Agreement shall replace and supersede the agreement between FINRA and BZX dated August 25, 2008; the agreement between FINRA and BYX dated September 3, 2010; the agreement between FINRA and EDGA dated March 31, 2010; and the agreement between FINRA and EDGX dated March 31, 2010.

Whereas, FINRA and the Bats Exchanges desire to reduce duplication in the examination and surveillance of their Common Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA and the Bats Exchanges desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Commission for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, FINRA and each Bats Exchange hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) ''*Bats Exchanges Rules*'' or ''*FINRA Rules*'' shall mean: (i) The rules of each Bats Exchange, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) ''*Common Rules*'' shall mean the rules of each Bats Exchange that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on *Exhibit 1* in that examination or surveillance for compliance with such provisions and rules would not require FINRA to develop one or more new examination or surveillance standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Common Member's activity, conduct, or output in relation to such provision or rule; provided, however, Common Rules shall not include the application of the SEC, each Bats Exchange or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among Bats Exchange, Inc., Bats-Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange Inc., EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Amex LLC, and NYSE Arca Inc. effective December 16, 2011, as may be amended from time to time.

(c) ''*Common Members*'' shall mean those Bats Exchange members that are also members of FINRA and the associated persons therewith.

(d) ''*Effective Date*'' shall have the meaning set forth in paragraph 13.

(e) ''*Enforcement Responsibilities*'' shall mean the conduct of appropriate proceedings, in accordance with FINRA's Code of Procedure and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA's Code of Procedure and sanctions guidelines.

(f) ''*Regulatory Responsibilities*'' shall mean the examination responsibilities, surveillance responsibilities and Enforcement Responsibilities relating to

[16] *See* paragraph 1(b) of the proposed 17d–2 Plan (defining Common Rules). *See also* paragraph 1(f) of the proposed 17d–2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either the Bats Exchanges rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that the Bats Exchanges shall furnish FINRA with a list of Common Members, and shall update the list no less frequently than once each calendar quarter.

[17] *See* paragraph 6 of the proposed 17d–2 Plan.

[18] *See* paragraph 2 of the proposed 17d–2 Plan.

[19] *See* paragraph 6 of the proposed 17d–2 Plan.

compliance by the Common Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto.

2. *Regulatory Responsibilities.* FINRA shall assume Regulatory Responsibilities for Common Members. Attached as *Exhibit 1* to this Agreement and made part hereof, each Bats Exchange furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are Bats Exchanges Rules are substantially similar to the corresponding FINRA Rules (the ''Certification''). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of any Bats Exchange or FINRA, the Bats Exchanges shall submit an updated list of Common Rules to FINRA for review which shall add Bats Exchanges Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete Bats Exchanges Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be Bats Exchanges Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibilities'' does not include, and each Bats Exchange shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the ''Retained Responsibilities'') the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving each Bats Exchange's own marketplace for rules that are not Common Rules;

(b) registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any Bats Exchanges Rules that are not Common Rules, except for any Bats Exchanges Rules for any broker-dealer subsidiary of Bats Global Markets, Inc., as provided in paragraph 6.

3. *Common Members.* Prior to the Effective Date, each Bats Exchange shall furnish FINRA with a current list of Common Members, which shall be updated no less frequently than once each quarter.

4. *No Charge.* There shall be no charge to the Bats Exchanges by FINRA for performing the Regulatory Responsibilities under this Agreement except as otherwise agreed by the parties, either herein or in a separate agreement.

5. *Reassignment of Regulatory Responsibilities.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission, or industry agreement, restructuring the regulatory framework of the securities industry or reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

6. *Notification of Violations.* In the event that FINRA becomes aware of apparent violations of any Bats Exchanges Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify the Bats Exchanges of those apparent violations for such response as the Bats Exchanges deem appropriate. In the event that any of the Bats Exchanges becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, the applicable Bats Exchange shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. With respect to apparent violations of any Bats Exchanges Rules by any broker-dealer subsidiary of Bats Global Markets, Inc., FINRA shall not make referrals to the Bats Exchanges pursuant to this paragraph 6. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this Agreement. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings. Apparent violations of Common Rules, FINRA Rules, federal securities laws, and rules and regulations thereunder, shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Common Member is the subject of an investigation relating to a transaction on a Bats Exchange, the Bats Exchange may in its discretion assume concurrent jurisdiction and responsibility.

7. *Continued Assistance.*

(a) FINRA shall make available to the Bats Exchanges all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Common Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish the Bats Exchanges any information it obtains about Common Members which reflects adversely on their financial condition. The Bats Exchanges shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Common Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. The parties shall not assert regulatory or other privileges as against another with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. *Statutory Disqualifications.* When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Common Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep the Bats Exchanges advised of its actions in this regard for such subsequent proceedings as the Bats Exchanges may initiate.

9. *Customer Complaints.* The Bats Exchanges shall forward to FINRA copies of all customer complaints involving Common Members received by the Bats Exchanges relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and

take appropriate action in respect to such complaints.

10. *Advertising.* FINRA shall assume responsibility to review the advertising of Common Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. *No Restrictions on Regulatory Action.* Nothing contained in this Agreement shall restrict or in any way encumber the right of any party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Common Members, as any party, in its sole discretion, shall deem appropriate or necessary.

12. *Termination.* This Agreement may be terminated by the Bats Exchanges or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

13. *Effective Date.* This Agreement shall be effective upon approval of the Commission.

14. *Arbitration.* In the event of a dispute among the parties as to the operation of this Agreement, the Bats Exchanges and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other parties. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 14 shall interfere with a party's right to terminate this Agreement as set forth herein.

15. *Notification of Members.* The Bats Exchanges and FINRA shall notify Common Members of this Agreement after the Effective Date by means of a uniform joint notice.

16. *Amendment.* This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

17. *Limitation of Liability.* Neither FINRA nor any Bats Exchange nor any of their respective directors, governors, officers or employees shall be liable to the other parties to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or any Bats Exchange and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or any Bats Exchange with respect to any of the responsibilities to be performed by each of them hereunder.

18. *Relief from Responsibility.* Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, FINRA and the Bats Exchanges join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve the Bats Exchanges of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

19. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

Exhibit 1

Bats BZX Exchange, Inc. (''BZX''), Bats BYX Exchange, Inc. (''BYX''), Bats EDGA Exchange, Inc. (''EDGA''), and Bats EDGX Exchange, Inc. (''EDGX'') Rules Certification for 17d–2 Agreement With FINRA

Each Bats Exchange hereby certifies that the requirements contained in the rules listed below are identical to, or substantially similar to, the comparable FINRA Rule, NASD Rule, Exchange Act provision or SEC Rule identified (''Common Rules'').

BZX rule:	BYX rule:	EDGA rule:	EDGX rule:	FINRA rule, NASD rule, Exchange Act Provision or SEC rule:
Rule 2.5 Restrictions, Interpretation and Policy .02 Continuing Education Requirements #.	Rule 2.5 Restrictions, Interpretation and Policy .02 Continuing Education Requirements #.	Rule 2.5 Restrictions, Interpretation and Policy .02 Continuing Education Requirements #.	Rule 2.5 Restrictions, Interpretation and Policy .02 Continuing Education Requirements #.	FINRA Rule 1250(a)(1)–(4) Continuing Education Requirements.[1]
Rule 2.5 Restrictions, Interpretation and Policy .04 Termination of Employment.	Rule 2.5 Restrictions, Interpretation and Policy .04 Termination of Employment.	Rule 2.5 Restrictions, Interpretation and Policy .04 Termination of Employment.	Rule 2.5 Restrictions, Interpretation and Policy .04 Termination of Employment.	FINRA By-Laws of the Corporation, Article V, Section 3 Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification.
Rule 2.6(g) Application Procedures for Membership or to become an Associated Person of a Member #.	Rule 2.6(g) Application Procedures for Membership or to become an Associated Person of a Member #.	Rule 2.6(g) Application Procedures for Membership or to become an Associated Person of a Member #.	Rule 2.6(g) Application Procedures for Membership or to become an Associated Person of a Member #.	FINRA By-Laws of the Corporation, Article IV, Section 1(c) Application for Membership.
Rule 3.1 Business Conduct of Members *.	Rule 3.1 Business Conduct of Members *.	Rule 3.1 Business Conduct of Members *.	Rule 3.1 Business Conduct of Members *.	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade.*
Rule 3.2 Violations Prohibited *.	Rule 3.2 Violations Prohibited *.	Rule 3.2 Violations Prohibited *.	Rule 3.2 Violations Prohibited *.	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade and FINRA Rule 3110 Supervision.*[2]

BZX rule:	BYX rule:	EDGA rule:	EDGX rule:	FINRA rule, NASD rule, Exchange Act Provision or SEC rule:
Rule 3.3 Use of Fraudulent Devices *.	Rule 3.3 Use of Fraudulent Devices *.	Rule 3.3 Use of Fraudulent Devices *.	Rule 3.3 Use of Fraudulent Devices *.	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices.*
Rule 3.5 Communications with the Public.	Rule 3.5 Communications with the Public.	Rule 3.5 Communications with the Public.	Rule 3.5 Communications with the Public.	FINRA Rule 2210 Communications with the Public.
Rule 3.6 Fair Dealing with Customers.	Rule 3.6 Fair Dealing with Customers.	Rule 3.6 Fair Dealing with Customers.	Rule 3.6 Fair Dealing with Customers.	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices.* [3]
Rule 3.7(a) Recommendations to Customers.	Rule 3.7(a) Recommendations to Customers.	Rule 3.7(a) Recommendations to Customers.	Rule 3.7(a) Recommendations to Customers.	FINRA Rule 2111(a) Suitability.
Rule 3.8(a) The Prompt Receipt and Delivery of Securities.	Rule 3.8(a) The Prompt Receipt and Delivery of Securities.	Rule 3.8(a) The Prompt Receipt and Delivery of Securities.	Rule 3.8(a) The Prompt Receipt and Delivery of Securities.	FINRA Rule 11860 COD Orders.
Rule 3.8(b) The Prompt Receipt and Delivery of Securities.	Rule 3.8(b) The Prompt Receipt and Delivery of Securities.	Rule 3.8(b) The Prompt Receipt and Delivery of Securities.	Rule 3.8(b) The Prompt Receipt and Delivery of Securities.	SEC Regulation SHO.
Rule 3.9 Charges for Services Performed.	Rule 3.9 Charges for Services Performed.	Rule 3.9 Charges for Services Performed.	Rule 3.9 Charges for Services Performed.	FINRA Rule 2122 Charges for Services Performed.
Rule 3.10 Use of Information	Rule 3.10 Use of Information	Rule 3.10 Use of Information	Rule 3.10 Use of Information	FINRA Rule 2060 Use of Information Obtained in Fiduciary Capacity.
Rule 3.11 Publication of Transactions and Quotations #.	Rule 3.11 Publication of Transactions and Quotations #.	Rule 3.11 Publication of Transactions and Quotations #.	Rule 3.11 Publication of Transactions and Quotations #.	FINRA Rule 5210 Publication of Transactions and Quotations.#
Rule 3.12 Offers at Stated Prices.	Rule 3.12 Offers at Stated Prices.	Rule 3.12 Offers at Stated Prices.	Rule 3.12 Offers at Stated Prices.	FINRA Rule 5220 Offers at Stated Prices.
Rule 3.13 Payment Designed to Influence Market Prices, Other than Paid Advertising.	Rule 3.13 Payment Designed to Influence Market Prices, Other than Paid Advertising.	Rule 3.13 Payments Involving Publications that Influence the Market Price of a Security.	Rule 3.13 Payments Involving Publications that Influence the Market Price of a Security.	FINRA Rule 5230 Payments Involving Publications that Influence the Market Price of a Security.
Rule 3.14 Disclosure on Confirmations.	Rule 3.14 Disclosure on Confirmations.	Rule 3.14 Disclosure on Confirmations.	Rule 3.14 Disclosure on Confirmations.	FINRA Rule 2232(a) Customer Confirmations and SEC Rule 10b–10 Confirmation of Transactions.
Rule 3.15 Disclosure of Control.	Rule 3.15 Disclosure of Control.	Rule 3.15 Disclosure of Control.	Rule 3.15 Disclosure of Control.	FINRA Rule 2262 Disclosure of Control Relationship With Issuer.
Rule 3.16 Discretionary Accounts.	Rule 3.16 Discretionary Accounts.	Rule 3.16 Discretionary Accounts.	Rule 3.16 Discretionary Accounts.	NASD Rule 2510 Discretionary Accounts.[4]
Rule 3.17 Customer's Securities or Funds.	Rule 3.17 Customer's Securities or Funds.	Rule 3.17 Customer's Securities or Funds.	Rule 3.17 Customer's Securities or Funds.	FINRA Rule 2150(a) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts—Improper Use.
Rule 3.18 Prohibition Against Guarantees.	Rule 3.18 Prohibition Against Guarantees.	Rule 3.18 Prohibition Against Guarantees.	Rule 3.18 Prohibition Against Guarantees.	FINRA Rule 2150(b) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts—Prohibition Against Guarantees.
Rule 3.19 Sharing in Accounts; Extent Permissible.	Rule 3.19 Sharing in Accounts; Extent Permissible.	Rule 3.19 Sharing in Accounts; Extent Permissible.	Rule 3.19 Sharing in Accounts; Extent Permissible.	FINRA Rule 2150(c)(1) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts—Sharing in Accounts; Extent Permissible.
Rule 3.21(a)–(f) Customer Disclosures.	Rule 3.21(a)–(f) Customer Disclosures.	Rule 3.21(a)–(f) Customer Disclosures.	Rule 3.21(a)–(f) Customer Disclosures.	FINRA Rule 2265 Extended Hours Trading Risk Disclosure.
Rule 3.22 Influencing or Rewarding Employees of Others.	Rule 3.22 Influencing or Rewarding Employees of Others.	Rule 3.20 Influencing or Rewarding Employees of Others.	Rule 3.20 Influencing or Rewarding Employees of Others.	FINRA Rule 3220 Influencing or Rewarding Employees of Others.
Rule 3.23 Telemarketing	Rule 3.23 Telemarketing	Rule 3.26 Telemarketing	Rule 3.26 Telemarketing	FINRA Rule 3230 Telemarketing.
Rule 4.1 Requirements	Rule 4.1 Requirements	Rule 4.1 Requirements	Rule 4.1 Requirements	Section 17 of the Exchange Act and the rules thereunder.* [5]
Rule 4.3 Record of Written Complaints.	Rule 4.3 Record of Written Complaints.	Rule 4.3 Record of Written Complaints.	Rule 4.3 Record of Written Complaints.	FINRA Rule 4513 Records of Written Customer Complaints.
Rule 5.1 Written Procedures	Rule 5.1 Written Procedures	Rule 5.1 Written Procedures	Rule 5.1 Written Procedures	FINRA Rule 3110(b)(1) Supervision-Written Procedures.* [6]
Rule 5.2 Responsibility of Members.	Rule 5.2 Responsibility of Members.	Rule 5.2 Responsibility of Members.	Rule 5.2 Responsibility of Members.	FINRA Rule 3110 (a)(4) and (b)(4) Supervision—Supervisory System/Written Procedures—Review of Correspondence and Internal Communications.*

BZX rule:	BYX rule:	EDGA rule:	EDGX rule:	FINRA rule, NASD rule, Exchange Act Provision or SEC rule:
Rule 5.3 Records	Rule 5.3 Records	Rule 5.3 Records	Rule 5.3 Records	FINRA Rule 3110 Supervision.*
Rule 5.4 Review of Activities	Rule 5.4 Review of Activities	Rule 5.4 Review of Activities	Rule 5.4 Review of Activities	FINRA Rule 3110(c) and (d) Supervision—Internal Inspections/Transaction Review and Investigation.*
Rule 5.6 Anti-Money Laundering Compliance Program #.	Rule 5.6 Anti-Money Laundering Compliance Program #.	Rule 5.6 Anti-Money Laundering Compliance Program #.	Rule 5.6 Anti-Money Laundering Compliance Program #.	FINRA Rule 3310 Anti-Money Laundering Compliance Program.
Rule 9.3 Predispute Arbitration Agreements.	Rule 9.3 Predispute Arbitration Agreements.	Rule 9.3 Predispute Arbitration Agreements.	Rule 9.3 Predispute Arbitration Agreements.	FINRA Rule 2268 Requirements When Using Predispute Arbitration Agreements for Customer Accounts.
Rule 11.18(e)(3) & (4) Trading Halts Due to Extraordinary Market Volatility.	Rule 11.18(e)(3) & (4) Trading Halts Due to Extraordinary Market Volatility.	Rule 11.16(e)(3) & (4) Trading Halts Due to Extraordinary Market Volatility.	Rule 11.16(e)(3) & (4) Trading Halts Due to Extraordinary Market Volatility.	FINRA Rule 6190(a)(1) & (2) Compliance with Regulation NMS Plan to Address Extraordinary Market Volatility.
Rule 11.19(a) Short Sales #^^	Rule 11.19(a) Short Sales #^^	Rule 11.10(a)(5) Order Execution-Short Sales #^^.	Rule 11.10(a)(5) Order Execution-Short Sales #^^.	FINRA Rule 6182 Trade Reporting of Short Sales.^^
Rule 12.1 Market Manipulation **.	Rule 12.1 Market Manipulation **.	Rule 12.1 Market Manipulation **.	Rule 12.1 Market Manipulation **.	FINRA Rule 6140 Other Trading Practices.**
Rule 12.2 Fictitious Transactions **.	Rule 12.2 Fictitious Transactions **.	Rule 12.2 Fictitious Transactions **.	Rule 12.2 Fictitious Transactions **.	FINRA Rule 6140 Other Trading Practices.**
Rule 12.3 Excessive Sales by a Member **.	Rule 12.3 Excessive Sales by a Member **.	Rule 12.3 Excessive Sales by a Member **.	Rule 12.3 Excessive Sales by a Member **.	FINRA Rule 6140(c) Other Trading Practices.**
Rule 12.4 Manipulative Transactions **.	Rule 12.4 Manipulative Transactions **.	Rule 12.4 Manipulative Transactions **.	Rule 12.4 Manipulative Transactions **.	FINRA Rule 6140(d) Other Trading Practices.**
Rule 12.5 Dissemination of False Information **.	Rule 12.5 Dissemination of False Information **.	Rule 12.5 Dissemination of False Information **.	Rule 12.5 Dissemination of False Information **.	FINRA Rule 6140(e) Other Trading Practices.**
Rule 12.6 Prohibition Against Trading Ahead of Customer Orders ^^.	Rule 12.6 Prohibition Against Trading Ahead of Customer Orders ^^.	Rule 12.6 Prohibition Against Trading Ahead of Customer Orders ^^.	Rule 12.6 Prohibition Against Trading Ahead of Customer Orders ^^.	FINRA Rule 5320 Prohibition Against Trading Ahead of Customer Orders.^^
Rule 12.9 Trade Shredding	Rule 12.9 Trade Shredding	Rule 12.9 Trade Shredding	Rule 12.9 Trade Shredding	FINRA Rule 5290 Order Entry and Execution Practices.
Rule 12.11 Best Execution ^^	Rule 12.11 Best Execution ^^	Rule 12.11 Best Execution ^^	Rule 12.11 Best Execution ^^	FINRA Rule 5310 Best Execution and Interpositioning.^^
Rule 12.13 Trading Ahead of Research Reports ^^.	Rule 12.13 Trading Ahead of Research Reports ^^.	Rule 12.13 Trading Ahead of Research Reports ^^.	Rule 12.13 Trading Ahead of Research Reports ^^.	FINRA Rule 5280 Trading Ahead of Research Reports.^^
Rule 12.14(a) Front Running of Block Transactions ^^.	Rule 12.14(a) Front Running of Block Transactions ^^.	Rule 12.14(a) Front Running of Block Transactions ^^.	Rule 12.14(a) Front Running of Block Transactions ^^.	FINRA Rule 5270 Front Running of Block Transactions.^^
Rule 13.2 Failure to Deliver and Failure to Receive.	Rule 13.2 Failure to Deliver and Failure to Receive.	Rule 13.2 Short Sale Borrowing and Delivery Requirements.	Rule 13.2 Short Sale Borrowing and Delivery Requirements.	Regulation SHO Rules 200 and 203.
Rule 13.3(a), (b), (d) and Interpretation and Policy .01 Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting.	Rule 13.3(a), (b), (d) and Interpretation and Policy .01 Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting.	Rule 13.3(a), (b), (d) and Interpretation and Policy .01 Forwarding of Proxy and Other Issuer-Related Materials.	Rule 13.3(a), (b), (d) and Interpretation and Policy .01 Forwarding of Proxy and Other Issuer-Related Materials.	FINRA Rule 2251 Processing and Forwarding of Proxy and Other Issuer-Related Materials.

In addition, the following provisions shall be part of this 17d–2 Agreement:
Securities Exchange Act of 1934 (“SEA”):
Section 15(g)
SEC Rules under the SEA:
SEC Rule 200 of Regulation SHO—Definition of “Short Sale” and Marking Requirements ^^
SEC Rule 201 of Regulation SHO—Circuit Breaker ^^
SEC Rule 203 of Regulation SHO—Borrowing and Delivery Requirements ^^
SEA Rule 204 of Regulation SHO—Close-Out Requirement ^^
SEC Rule 101 of Regulation M—Activities by Distribution Participants ^^
SEC Rule 102 of Regulation M—Activities by Issuers and Selling Security Holders During a Distribution ^^
SEC Rule 103 of Regulation M—Nasdaq Passive Market Making ^^
SEC Rule 104 of Regulation M—Stabilizing and Other Activities in Connection with an Offering ^^
SEC Rule 105 of Regulation M—Short Selling in Connection With a Public Offering ^^
SEC Rules 17a–3/17a–4—Records to be made by Certain Exchange Members, Brokers, and Dealers/Records to be Preserved by Certain Exchange Members, Brokers, and Dealers *

FINRA shall not have Regulatory Responsibilities regarding notification or reporting to the Bats Exchanges and to the extent any exercise of discretion is not the same.

* FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among Bats Exchange, Inc., Bats-Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange Inc., EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Amex LLC, and NYSE Arca Inc. effective December 16, 2011, as may be amended from time to time.

** FINRA shall not have Regulatory Responsibilities for these rules as they pertain to trading practices involving securities that do not meet the definition of NMS stock as defined in Rule 600(b)(47) of Regulation NMS. As of the current date, Bats Exchanges do not trade any non-NMS stock.

^^ FINRA shall perform the surveillance responsibilities for the double caret rules. These rules may be cited by FINRA in both the context of this Agreement and the Regulatory Services Agreement.

[1] FINRA shall only have Regulatory Responsibilities to the extent that the allowance for additional time for a registered person to satisfy the regulatory element is consistently granted.

[2] FINRA shall only have Regulatory Responsibilities regarding the first phrase of the Bats Exchanges rules regarding prohibitions from violating the Securities Exchange Act of 1934 and the rules and regulations thereunder; responsibility for the remainder of the rule shall remain with the Bats Exchanges.
[3] FINRA shall not have Regulatory Responsibilities regarding .01 of each Bats Exchange Rule 3.6.
[4] FINRA shall not have Regulatory Responsibilities for the Bats Exchanges' Rule to the extent the exception in NASD Rule 2510(d)(2) applies.
[5] FINRA shall not have Regulatory Responsibilities regarding requirements to keep records "in conformity with . . . Exchange Rules;" responsibility for such requirement remains with the Bats Exchanges.
[6] FINRA shall not have Regulatory Responsibilities regarding requirements to assure compliance with the Bats Exchange Rules; responsibility for such requirement remains with each Bats Exchange.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number 4–705 on the subject line.

Paper Comments

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

All submissions should refer to File Number 4–705. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of FINRA, BZX, BYX, EDGX, and EDGA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–705 and should be submitted on or before November 3, 2016.

IV. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in Section 17(d) of the Act[20] and Rule 17d–2(c) thereunder[21] in that the proposed Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission notes that the proposed Plan replaces and supersedes each of the original bilateral Plans between FINRA and a Bats Exchange without materially altering the core terms of any of the Plans. The Bats Exchanges, which all are under the common control of Bats Global Markets, Inc., have substantively identical Common Rules among themselves. The Parties have now proposed to add additional rules to the list of Common Rules and have used this opportunity to also combine their separate bilateral 17d–2 Plans into a combined plan among all of the Parties.

Because the proposed combined Plan preserves the general framework of each of the current bilateral Plans, and adds a number of additional Common Rules to the Regulatory Responsibilities assumed by FINRA under the Plans, the Commission believes that the proposed combined Plan should continue to reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by each Bats Exchange and FINRA. Accordingly, the proposed Plan promotes efficiency by reducing costs to Common Members. Furthermore, because the Bats Exchanges and FINRA will coordinate their regulatory functions in accordance with the Plan, the Plan should promote investor protection.

The Commission notes that when it granted the application of each of the Bats Exchanges for registration as a national securities exchange, the Commission conditioned the operation of each Bats Exchange on the satisfaction of several requirements.[22] One of those requirements was the effectiveness of an agreement pursuant to Rule 17d–2 between FINRA and the Bats Exchange that allocates to FINRA regulatory responsibility for certain specified matters.[23] The original bilateral 17d–2 Plans represents the Bats Exchanges' effort to satisfy that prerequisite, and the proposed combined Plan preserves the general framework of each of the current bilateral plans while expanding the list of Common Rules allocated under the agreement.

The Commission notes that, under the Plan, the Bats Exchanges and FINRA have allocated regulatory responsibility for those rules of the Bats Exchanges, set forth on the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to such rule. In addition, under the Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

Under the Plan, each Bats Exchange would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving the Bats Exchange's own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any Bats Exchange rules that are not Common Rules, except for the Bats Exchange rules for any broker-dealer

[20] 15 U.S.C. 78q(d).
[21] 17 CFR 240.17d–2(c).
[22] *See* Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting BZX's application for registration as a national securities exchange); 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting BYX's application for registration as a national securities exchange); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File No. 10–194) (order granting EDGA's application for registration as a national securities exchange); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File No. 10–196) (order granting EDGX's application for registration as a national securities exchange).
[23] *See id.*

subsidiary of Bats Global Markets, Inc.[24] Apparent violations of any Bats Exchanges rules by any broker-dealer subsidiary of Bats Global Markets, Inc. will be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA.[25] The effect of these provisions is that regulatory oversight and enforcement responsibilities for any broker-dealer subsidiary of Bats Global Markets, Inc., which is the parent company of the Bats Exchanges, will be vested with FINRA. These provisions should help avoid any potential conflicts of interest that could arise if a Bats Exchange was primarily responsible for regulating its affiliated broker-dealers.

According to the Plan, the Bats Exchanges will review the Certification, at least annually, or more frequently if required by changes in either the rules of the Bats Exchanges or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add the Bats Exchanges rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete the Bats Exchanges rules included in the then-current list of Common Rules that are no longer substantially similar to FINRA rules; and confirm that the remaining rules on the list of Common Rules continue to be the Bats Exchanges rules that are substantially similar to FINRA rules.[26] FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Plan. Under the Plan, each Bats Exchange will also provide FINRA with a current list of Common Members and shall update the list no less frequently than once each quarter.[27]

The Commission is hereby declaring effective a plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all the Bats Exchanges rules that are substantially similar to the rules of FINRA for Common Members of the Bats Exchanges and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Plan, provided that the Parties are only adding to, deleting from, or confirming changes to the Bats Exchanges rules in the Certification in conformance with the definition of Common Rules provided in the Plan. However, should the Parties decide to add a rule of the Bats Exchanges to the Certification that is not substantially similar to a FINRA rule; delete a rule of the Bats Exchanges from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a rule of the Bats Exchange that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act and noticed for public comment.[28]

The Plan also permits the Bats Exchanges and FINRA to terminate the Plan, subject to notice.[29] The Commission notes, however, that while the Plan permits the Parties to terminate the Plan, the Parties cannot by themselves reallocate the regulatory responsibilities set forth in the Plan, since Rule 17d–2 under the Act requires that any allocation or re-allocation of regulatory responsibilities be filed with the Commission.[30]

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed plan is effective. In particular, the purpose of the proposed Plan is to consolidate, for administrative ease, the separate bilateral Plans between FINRA and each Bats Exchange into one combined Plan. The Commission notes that the original bilateral Plans between FINRA and each Bats Exchange were published for comment and the Commission did not receive any comments thereon.[31] Further, as noted above, the proposed combined Plan preserves the general framework of each of the current bilateral Plans while expanding the list of Common Rules allocated under the agreement. Accordingly, the Commission believes that the proposed plan does not raise any new regulatory issues that the Commission has not previously considered, and therefore believes that the Plan should become effective without any undue delay.

V. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4–705. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Plan in File No. 4–705, between FINRA, BZX, BYX, EDGA, and EDGX, filed pursuant to Rule 17d–2 under the Act, is approved and declared effective.

It is further ordered that BZX, BYX, EDGA, and EDGX are relieved of those responsibilities allocated to FINRA under the Plan in File No. 4–705.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Brent J. Fields,

Secretary.

[FR Doc. 2016–24709 Filed 10–12–16; 8:45 am]

BILLING CODE 8011–01–P

[24] *See* paragraph 2 of the proposed 17d–2 Plan.

[25] *See* paragraph 6 of the proposed 17d–2 Plan.

[26] *See* paragraph 2 of the proposed 17d–2 Plan.

[27] *See* paragraph 3 of the proposed 17d–2 Plan.

[28] The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Plan.

[29] *See* paragraph 12 of the proposed 17d–2 Plan.

[30] The Commission notes that paragraph 12 of the Plan reflects the fact that FINRA's responsibilities under the Plan will continue in effect until the Commission approves any termination of the Plan.

[31] *See supra* notes 3–6.

[32] 17 CFR 200.30–3(a)(34).

DEPARTMENT OF STATE

Public Notice; Culturally Significant Objects Imported for Exhibition Determinations: ''Pierre Gouthière: Virtuoso Gilder at the French Court'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Pierre Gouthière: Virtuoso Gilder at the French Court,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, New York, from on or about November 16, 2016, until on or about February 19, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs

in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: October 3, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–24896 Filed 10–12–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Pilot Records Improvement Act of 1996 (PRIA)/Pilot Records Database (PRD)

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew a previously approved information collection. Title 49 United States Code (49 U.S.C.) 44703(h): Records of Employment of Pilot Applicants, which was established by the Pilot Records Improvement Act of 1996 (PRIA), mandates that air carriers who have been issued a part 119 air carrier certificate and are authorized to conduct operations under Title 14 of the Code of Federal Regulations (14 CFR) part 121 or part 135 as well as part 125 and 135 operators, request and receive FAA records, air carrier and other operator records, and the National Driver Register records before allowing an individual to begin service as a pilot.

DATES: Written comments should be submitted by December 12, 2016.

ADDRESSES: Send comments to the FAA at the following address: Ronda Thompson, Federal Aviation Administration, ASP–110, 800 Independence Ave. SW., Washington, DC 20591.

PUBLIC COMMENTS INVITED: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0607.

Title: Pilot Records Improvement Act (PRIA)/Pilot Records Database (PRD).

Form Numbers: FAA Forms 8060–10, 8060–10A, 8060–11, 8060–11A, 8060–12, 8060–13.

Type of Review: Renewal of an information collection

Background: Title 49 United States Code (49 U.S.C.) 44703(h): Records of Employment of Pilot Applicants, which was established by the Pilot Records Improvement Act of 1996 (PRIA), mandates that air carriers who have been issued a part 119 air carrier certificate and are authorized to conduct operations under Title 14 of the Code of Federal Regulations (14 CFR) part 121 or part 135 as well as part 125 and 135 operators, request and receive FAA records, air carrier and other operator records, and the National Driver Register records before allowing an individual to begin service as a pilot. Additionally, fractional ownerships operating in accordance with subpart K of part 91 are required to complete a pilot safety background check before allowing an individual to begin service as a pilot (reference § 91.1051). Furthermore, air tour operators operating in accordance with § 91.147 are required to obtain an individual's previous drug and/or alcohol testing records before allowing an individual to begin service as a pilot. All requestors are heretofore referred to as ''air carriers.'' The FAA is also deploying a web-based online application called the Pilot Records Database (PRD) in December 2016 that is expected to benefit hiring air carriers, operators, and pilots required to comply with PRIA. This application automates the current PRIA process and provides an air carrier with immediate access to a consenting pilot's FAA records.

Respondents: Approximately 14,974.

Frequency: On occasion.

Estimated Average Burden per Response: 2.5 hours.

Estimated Total Annual Burden: 37,432 hours.

Issued in Washington, DC, on October 6, 2016.

Ronda Thompson,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2016–24771 Filed 10–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Revision of a Currently Approved Information Collection: Air Traffic Slots Management

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FAA invites public comments about our intention to request approval from the Office of Management and Budget (OMB) to revise a currently approved information collection. The FAA collects information to allocate slots and maintain accurate records of slot transfers at slot-controlled and schedule-facilitated airports. The information is provided by air carriers and other operators at all impacted airports.

DATES: Written comments should be submitted by December 12, 2016.

ADDRESSES: Send comments to the FAA at the following address: Ronda Thompson, Federal Aviation Administration, ASP–110, 800 Independence Ave. SW., Washington, DC 20591.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0524.

Title: Air Traffic Slots Management.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Revision of an information collection.

Background: The FAA has implemented several initiatives to address congestion and delay issues within the National Airspace System. The FAA has issued Orders limiting operations at John F. Kennedy International Airport (JFK), Newark Liberty International Airport (EWR), and LaGuardia Airport (LGA). These Orders resulted in part from increasing congestion and delays at the airports requiring the FAA to allocate arrival and departure slots at JFK, EWR, and LGA. On April 6, 2016, the FAA announced a reduction in slot controls at EWR and designation of EWR as a Level 2, schedule-facilitated airport under the International Air Transport Association (IATA) Worldwide Slot Guidelines (WSG) based on an updated demand and capacity analysis of the airport. This change is effective from the Winter 2016 scheduling season, which begins on October 30, 2016. The FAA also has designated O'Hare International Airport (ORD), San Francisco International Airport (SFO), and Los Angeles International Airport (LAX) as Level 2 airports under the IATA WSG. These Level 2 designations resulted in part from increasing congestion and delays at the airports requiring FAA to implement a voluntary process to manage operational growth at ORD and SFO. The Level 2 designation was made at LAX due to a long-term construction project expected to reduce runway capacity; therefore, the designation is not expected to continue beyond the completion of the planned construction at LAX.

The information is reported to the FAA by carriers holding a slot at JFK or LGA; by carriers operating at EWR, LAX, ORD, or SFO; and by operators conducting unscheduled operations at LGA. At JFK, carriers must notify the FAA of: (1) Requests for confirmation of transferred slots; (2) requests for seasonal allocation of historic and additional available slots; and (3) usage of slots on a seasonal basis. At LGA, carriers must notify the FAA of: (1) Requests for confirmation of transferred slots; (2) slots required to be returned or slots voluntarily returned; (3) requests to be included in a lottery for available slots; and (4) usage of slots on a bi-monthly basis. At LGA, unscheduled operators must request and obtain a reservation from the FAA prior to conducting an operation. At EWR, LAX, ORD and SFO, carriers are asked to notify the FAA of their intended operating schedules during peak hours on a semiannual basis. The FAA estimates that all information from carriers is submitted electronically from information stored in carrier scheduling databases, and that nearly all requests for unscheduled operation reservations are submitted electronically through either an internet or touch-tone system interface.

Respondents: 200 carriers at various airports; unknown number of unscheduled operators at LaGuardia Airport.

Frequency: Information is collected as needed; some reporting on bimonthly or semiannual basis.

Estimated Average Burden per Response: 2 minutes per unscheduled operation reservation; 6 minutes per notice of slot transfer; 2 hour per schedule submission or slot request; and 2 hours per slot usage report.

Estimated Total Annual Burden: 5,049.5 hours.

Issued in Washington, DC, on October 6, 2016.

Ronda L. Thompson,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2016–24772 Filed 10–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25854; FMCSA–2013–0107; FMCSA–2013–0108]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions of six individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were effective on December 23, 2015. The exemptions will expire on December 23, 2017. Comments must be received on or before November 14, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2006–25854; FMCSA–2013–0107; FMCSA–2013–0108 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these

comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for two years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the two-year period.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The six individuals listed in this notice have requested renewal of their exemptions from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the six applicants has satisfied the conditions for obtaining an exemption from the Epilepsy and Seizure Disorder requirements and were published in the **Federal Register** (78 FR 77774). In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce.

The six drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. FMCSA has concluded that renewing the exemptions for each of these applicants is likely to achieve a level of safety equal to that existing without the exemption. Therefore, FMCSA has decided to renew each exemption for a two-year period. In accordance with 49 U.S.C. 31136(e) and 31315, each driver received a renewed exemption.

As of December 23, 2015, the following six drivers received renewed exemptions. Each of these individuals have satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (78 FR 77774):

Stephen Amell (VT)
Gary Freeman (AL)
Aaron Gillette (SD)
David Kestner (VA)
Michael Kramer (KS)
Chad Smith (MA)

These drivers were included in FMCSA–2006–25854; FMCSA–2013–0107; and FMCSA–2013–0108. The exemptions were effective on December 23, 2015, and will expire on December 23, 2017.

IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the six exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the Epilepsy and Seizure Disorders requirement in 49 CFR 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: October 4, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–24755 Filed 10–12–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0045]

Petition for Special Approval of Alternate Standard

In accordance with part 238 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that by a document dated February 18, 2015, the National Railroad Passenger Corporation (Amtrak) has petitioned the Federal Railroad Administration (FRA) for a Special Approval of an alternate standard for 49 CFR 238.311(a), *Single car test,* as prescribed in 49 CFR 238.21(b), *Special approval procedure.* FRA assigned the request Docket Number FRA–2016–0045.

Amtrak requests consideration for Special Approval of the submitted alternate standard identified as ''Brakes Single Car Test LXFB–10–0008'' for single car testing of auto carrier cars used on its Auto Train service between Lorton, VA, and Sanford, FL. Amtrak states that its Auto Train has a freight brake system. Amtrak, however, runs brake pipe pressure at 110 pounds per square inch (psi) and not 90 psi like the freight railroads. Under FRA's rules, these cars would need to have a single car test per 49 CFR 232.305 following the procedure of Association of American Railroads' (AAR) Standard S–486–04. The 49 CFR 238.311 referenced procedure of American Public Transportation Association Standard SS–M–005–98 does not apply. The proposed alternate standard, while still based on AAR S–486–04, incorporates modifications to the single car test device and procedures to allow for the higher 110 psi brake pressure.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 14, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC, on October 5, 2016.

Karl Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2016–24678 Filed 10–12–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (PRA).

SUMMARY: In accordance with the requirements of the PRA (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. On July 5, 2016, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days (81 FR 43605) on a proposal to extend, with revision, the Market Risk Regulatory Report for Institutions Subject to the Market Risk Capital Rule (FFIEC 102), which is currently an approved collection of information for each agency. The comment period for this notice ended on September 6, 2016. The agencies did not receive any comments. The agencies are now submitting a request to OMB for review and approval of the extension, with revision, of the FFIEC 102. The proposed revisions would take effect December 31, 2016.

DATES: Comments must be submitted on or before November 14, 2016.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control numbers, will be shared among the agencies.

OCC: Because paper mail in the Washington, DC, area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible, to *prainfo@occ.treas.gov.* Alternatively, comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0325 (FFIEC 102), 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326.

You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

Board: You may submit comments, which should refer to ''FFIEC 102,'' by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: regs.comments@federalreserve.gov.* Include reporting form number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 3515, 1801 K Street (between 18th and 19th Streets), NW., Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''FFIEC 102,'' by any of the following methods:

• *Agency Web site: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC Web site.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: comments@FDIC.gov.* Include ''FFIEC 102'' in the subject line of the message.

• *Mail:* Manuel E. Cabeza, Counsel, Room MB–3007, Attn: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the revisions to the FFIEC 102 discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the FFIEC 102 reporting form and instructions are available on the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, or for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the FFIEC 102, which is currently an approved collection of information for each agency:

Report Title: Market Risk Regulatory Report for Institutions Subject to the Market Risk Capital Rule.

Form Number: FFIEC 102.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Control No.: 1557–0325.

Estimated Number of Respondents: 12 national banks and federal savings associations.

Estimated Burden per Response: 12 burden hours per quarter to file.

Estimated Total Annual Burden: 576 burden hours to file.

Board

OMB Control No.: 7100–0365.

Estimated Number of Respondents: 31 state member banks, bank holding companies, savings and loan holding companies, and intermediate holding companies.

Estimated Burden per Response: 12 burden hours per quarter to file.

Estimated Total Annual Burden: 1,488 burden hours to file.

FDIC

OMB Control No.: 3064–0199.

Estimated Number of Respondents: 1 insured state nonmember bank or state savings association.

Estimated Burden per Response: 12 burden hours per quarter to file.

Estimated Total Annual Burden: 48 burden hours to file.

General Description of Report

This quarterly information collection is mandatory for market risk institutions, defined for this purpose as those institutions that are subject to the market risk capital rule as incorporated into Subpart F of the agencies' regulatory capital rules (market risk institutions).[1] All data reported in the FFIEC 102 are available to the public. Each market risk institution is required to file the FFIEC 102 for the agencies' use in assessing the reasonableness and accuracy of the institution's calculation of its minimum capital requirements under the market risk capital rule and in evaluating the institution's capital in relation to its risks. Additionally, the market risk information collected in the FFIEC 102: (a) Permits the agencies to monitor the market risk profile of and evaluate the impact and competitive implications of the market risk capital rule on individual market risk institutions and the industry as a whole; (b) provides the most current statistical data available to identify areas of market risk on which to focus for onsite and offsite examinations; (c) allows the agencies to assess and monitor the levels and components of each reporting institution's risk-based capital requirements for market risk and the adequacy of the institution's capital under the market risk capital rule; and (d) assists market risk institutions in validating their implementation of the market risk framework.

Current Actions

On July 5, 2016, the agencies published a notice in the **Federal Register** [2] and requested comment on a proposal to revise the FFIEC 102 effective December 31, 2016, to (1) have a market risk institution provide its Legal Entity Identifier (LEI) on the reporting form, only if the institution already has an LEI, and (2) add U.S. Intermediate Holding Companies to the Board's respondent panel. The comment

[1] 12 CFR 3.201 (OCC); 12 CFR 217.201 (Board); and 12 CFR 324.201 (FDIC). The market risk capital rule generally applies to any banking institution with aggregate trading assets and trading liabilities equal to (a) 10 percent or more of quarter-end total assets or (b) $1 billion or more. The statutory provisions that grant the agencies the authority to impose capital reporting requirements are 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1844(c) (bank holding companies), 12 U.S.C. 1467a(b) (savings and loan holding companies), 12 U.S.C. 5365 (U.S. intermediate holding companies), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (savings associations).

[2] 81 FR 43605 (July 5, 2016).

period for this notice ended on September 6, 2016.

The agencies did not receive any comments. The agencies are now submitting a request to OMB for review and approval of the extension, with revision, of the FFIEC 102 that incorporates the two changes proposed in the July 5 notice.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: October 5, 2016.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, October 6, 2016.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 6th day of October, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–24756 Filed 10–12–16; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3cPR, W–3PR, and W–3SS.

DATES: Written comments should be received on or before December 12, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to Sara Covington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: W–2 (Wage and Tax Statement), W–2c (Corrected Wage and Tax Statement). W–2AS (American Samoa Wage and Tax Statement), W–2GU (Guam Wage and Tax Statement), W–2VI (U.S. Virgin Islands Wage and Tax Statement), W–3 (Transmittal of Wage and Tax Statements), W–3c (Transmittal of Corrected Wage and Tax Statements), W–3PR (Informe de Comprobantes de Retencio'n Transmittal of Withholding Statements, W–3c PR (TRANSMISION DE COMPROBANTES DE RETENCIO'N CORREGIDOS, Transmittal of Corrected Wage and Tax Statements), and W–3SS (Transmittal of Wage and Tax Statements).

OMB Number: 1545–0008.

Form Numbers: Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3cPR, W–3PR, and W–3SS.

Abstract: Employers report income and withholding information on Form W–2. Individuals use Form W–2 to prepare their income tax returns. Forms W–2AS, W–2GU and W–2VI are variations of Form W–2 for use in U.S. possessions. The Form W–3 series is used to transmit W–2 series forms to the Social Security Administration. Forms W–2c, W–3c and W–3cPR are used to correct previously filed Forms W–2, W–3, and W–3PR.

Current Actions: There are changes in the paperwork burden previously approved by OMB.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals, or households, not-for-profit institutions, farms, and Federal, state local or tribal governments.

Estimated Number of Respondents: 253,950,820.

Estimated Time per Respondent: Varies.

Estimated Total Annual Burden Hours: 1.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 22, 2016.

Tuawana Pinkston,

IRS Supervisory Tax Analyst.

[FR Doc. 2016–24665 Filed 10–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041 and Related Schedules D, I, J, K–1, and Form 1041–V

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041 and related Schedules D, I, J, K–1 and Form 1041–V, U.S. Income Tax Return for Estates and Trusts.

DATES: Written comments should be received on or before December 12, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Kerry Dennis at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Estates and Trusts (Form 1041), Capital Gains and Losses (Schedule D), Alternative Minimum Tax—Estates and Trusts (Schedule I), Accumulation Distribution for Certain Complex Trusts (Schedule J), Beneficiary's Share of Income, Deductions, Credits, etc. (Schedule K–1), and Payment Voucher (Form 1041–V).

OMB Number: 1545–0092.

Form Number: 1041 and related Schedules D, I, J, K–1, and 1041–V.

Abstract: IRC section 6012 requires that an annual income tax return be filed for estates and trusts. The data is used by the IRS to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 11,513,150.

Estimated Time per Response: 32 hours, 38 minutes.

Estimated Total Annual Burden Hours: 375,796,476.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 30, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–24663 Filed 10–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Committee to the Internal Revenue Service; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: The Information Reporting Program Advisory Committee (IRPAC) will hold a public meeting on Wednesday, October 26, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Deneroff, National Public Liaison, CL:NPL:SRM, Rm. 7559, 1111 Constitution Avenue NW., Washington, DC 20224. Phone: 202–317–6851 (not a toll-free number). Email address: *PublicLiaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the IRPAC will be held on Wednesday, October 26, 2016 from 9:00 a.m. to 12:00 p.m. at The Melrose Georgetown Hotel, 2430 Pennsylvania Ave NW., Washington, DC, 20037. Report recommendations on issues that may be discussed include: Foreign Account Tax Compliance Act; Complex Debt Reporting Requirements; IRC § 6050W and Form 1099–K Reporting; 2016 Form 8949 Instructions; IRS Publication 1179 Substitute 1099–B Specifications; Form 1098 Mortgage Interest Reporting; 529 Accounts; Hard to Value Assets; IRC § 6050S and Form 1098–T Reporting; Information Reporting for IRA Assets Escheated to State Governments and 60-Day Rollover Relief; Reporting by Insurance Companies and Applicable Large Employers under IRC § 6055 and § 6056; Theft of Business Taxpayer's Identity; Reactivation on the on-line Electronic Account Resolution Tool; Electronic Furnishing of Forms W–2 and 1095–C; Improving Frequently Asked Questions; Form W–9, 972CG Penalty Abatement Process. Last minute agenda changes may preclude advance notice. Due to limited seating and security requirements, please call or email Michael Deneroff to confirm your attendance. Mr. Deneroff can be reached at 202–317–6851 or *PublicLiaison@irs.gov*. Should you wish the IRPAC to consider a written statement, please call 202–317–6851, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:SRM, Room 7559, 1111 Constitution Avenue NW., Washington, DC 20224 or email: *PublicLiaison@irs.gov.*

Dated: September 6, 2016.

John Lipold,

Designated Federal Official Branch Chief, National Public Liaison.

[FR Doc. 2016–24673 Filed 10–12–16; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Part 240
Definition of Covered Clearing Agency; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–78963; File No. S7–23–16]

RIN 3235–AL48

Definition of Covered Clearing Agency

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') proposes to amend the definition of ''covered clearing agency'' under Rule 17Ad–22 to mean a registered clearing agency that provides the services of a central counterparty (''CCP''), central securities depository (''CSD''), or a securities settlement system (''SSS''). The Commission also proposes a definition of ''securities settlement system'' and proposes to amend the definitions of ''central securities depository services'' to facilitate the proposed amendment to ''covered clearing agency.'' In addition, the Commission proposes to amend the definition of ''sensitivity analysis'' under Rule 17Ad–22 to expand the scope of covered clearing agencies subject to requirements thereunder. These amendments are proposed 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: Submit comments on or before December 12, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–23–16 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–23–16. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's Web site. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *http://www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Jeffrey Mooney, Assistant Director; Stephanie Park, Senior Special Counsel; Matthew Lee, Branch Chief; Elizabeth Fitzgerald, Branch Chief; or DeCarlo McLaren, Attorney-Adviser; Office of Market Infrastructure, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010, at (202) 551–5710.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend the definition of ''covered clearing agency'' in Rule 17Ad–22(a)(5) to mean a registered clearing agency that provides the services of a CCP, CSD, or SSS. The Commission further proposes to define ''securities settlement system'' under Rule 17Ad–22 to mean a clearing agency that enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules.[1] The Commission also proposes to amend 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.[2]

In addition, the Commission proposes to amend the definition of ''sensitivity analysis'' in Rule 17Ad–22(a)(16) to expand its coverage, 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.[3]

In developing these proposed 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'').[4] The Commission has also considered the relevant international standards as required by Section 805(a)(2)(A) of the Clearing Supervision Act.[5] The relevant international standards for CCPs, CSDs, and SSSs are the *Principles for Financial Market Infrastructures* (''PFMI'').[6]

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[1] To facilitate this proposed addition, the Commission would renumber the remaining definitions in Rule 17Ad–22(a).

[2] *See* 15 U.S.C. 78c(a)(23)(A).

[3] If the proposed definition of ''securities settlement system'' is adopted, the definition of ''sensitivity analysis'' would move to Rule 17Ad–22(a)(17).

[4] *See* 12 U.S.C. 5472.

[5] *See* 12 U.S.C. 5464(a)(2)(A).

[6] *See* Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions (''CPSS–IOSCO''), Principles for Financial Market Infrastructures (Apr. 16, 2012), *available at http://www.bis.org/publ/cpss101a.pdf*.

The PFMI sets forth twenty-four principles for financial market infrastructures (''FMIs''), each of which includes a headline standard and a list of key considerations that further explain the headline standard. Accompanying explanatory notes further discuss the objectives of and rationales for the standards, as well as provide guidance on how the standards can be implemented. *See id.* at 17. Commission staff co-chaired the working group within CPSS–IOSCO that drafted both the consultative and final versions of the PFMI. In 2014, the CPSS became the Committee on Payments and Market Infrastructures (''CPMI'').

CPMI–IOSCO has published subsequent guidance relevant to implementation of the PFMI. *See* PFMI: Disclosure framework and Assessment methodology (Dec. 2012), *available at http://www.bis.org/cpmi/publ/d106.pdf* (''PFMI disclosure framework''); Recovery of FMIs (Oct. 2014), *available at http://www.bis.org/cpmi/publ/d121.pdf*; Public quantitative disclosure standards for CCPs (Feb. 2015), *available at http://www.bis.org/cpmi/publ/d125.pdf* (''PFMI quantitative disclosures''); Guidance on cyber resilience for FMIs (Nov. 2015, consultative report), *available at http://www.bis.org/cpmi/publ/d138.pdf*; Resilience and recovery of CCPs: Further guidance on the PFMI (Aug. 2016, consultative report), *available at http://www.bis.org/cpmi/publ/d149.pdf*.

I. Introduction

The Commission preliminarily believes that amending the definition of ''covered clearing agency'' would further the Commission's ongoing efforts to enhance the regulatory framework for clearing agencies.[7] As discussed below, the Commission preliminarily believes that registered clearing agencies providing the services of CCPs, CSDs, and SSSs perform a critical role for the U.S. securities markets and the broader U.S. financial system by helping to reduce risk and by providing transparency to the markets. In light of this critical role, the Commission preliminary believes that the definition of ''covered clearing agency'' should be expanded to include all such clearing agencies, which would make them subject to the enhanced requirements of Rule 17Ad–22(e).

A. Regulatory Framework

Below is an overview of the relevant regulatory requirements for registered clearing agencies and for clearing agencies operating pursuant to an exemption from registration (''exempt clearing agencies'').

1. Exchange Act

Section 17A of the Exchange Act directs the Commission to facilitate the establishment of (i) a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) linked or coordinated facilities for clearance and settlement of securities transactions.[8] In facilitating the establishment of the national clearance and settlement system, the Commission must 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.[9]

As discussed further below, clearing agencies are broadly defined in the Exchange Act and undertake a variety of functions.[10] Under Section 17A and Rule 17Ab2–1,[11] an entity that meets the definition of a clearing agency is required to register with the Commission or obtain from the Commission an exemption from registration prior to performing the functions of a clearing agency. To grant registration to a clearing agency, the Exchange Act requires the Commission to determine that the rules and operations of the applicant clearing agency meet the standards set forth in Section 17A.[12] Specifically, Section 17A(b)(3) provides that a clearing agency shall not be registered unless the Commission determines that the clearing agency's rules are consistent with the Exchange Act. In so doing, the Commission must determine that, among other things, (i) the clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and to safeguard securities or funds in its custody or control, (ii) the rules of the clearing agency assure a fair representation of its members and participants in the selection of its directors and administration of its affairs, (iii) the rules of the clearing agency provide for the equitable allocation of reasonable dues and fees, and (iv) the rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions.[13] Section 17A(b)(1) further provides that upon the

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[7] With these proposed rule amendments and guidance, the Commission is not re–opening comment on the rules adopted by the Commission in the CCA Standards adopting release with respect to those entities already subject to the adopted rules. *See* Exchange Act Release No. 34–78961, (Sept. 28, 2016) (''CCA Standards adopting release'').

[8] *See* 15 U.S.C. 78q–1(a)(2); *see also* Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94–75, at 4 (1975) (urging that ''[t]he Committee believes the banking and security industries must move quickly toward the establishment of a fully integrated national system for the prompt and accurate processing and settlement of securities transactions'').

[9] *See* 15 U.S.C. 78q–1(a)(2)(A).

[10] *See* 15 U.S.C. 78c(a)(23)(A); *see also infra* note 40 and accompanying text (setting forth the definition of ''clearing agency'' under the Exchange Act).

[11] *See* 17 CFR 240.17Ab2–1.

[12] *See* 15 U.S.C. 78q–1(b)(3)(A)–(I) (identifying nine determinations that the Commission must make regarding the rules and structure of a clearing agency to grant registration). In 1980, the Commission published a statement of the views and positions of Commission staff regarding the requirements of Section 17A. *See* Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

[13] *See* 15 U.S.C. 78q–1(b)(3)(A), (C), (D), (F).

Commission's motion or upon a clearing agency's application, the Commission may conditionally or unconditionally exempt a clearing agency from any provision of Section 17A of the Exchange Act or the rules or regulations thereunder if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities and funds.[14]

Following this registration process, the Commission supervises registered clearing agencies using various tools. One of these tools is Rule 17a–1 under the Exchange Act, which requires every registered clearing agency to keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity for a period not less than five years and, upon request of any representative of the Commission, to promptly furnish to the possession of such representative copies of any such documents required to be kept.[15] Another of these tools is the rule filing process for self-regulatory organizations (''SROs''),[16] set forth in Section 19(b) of the Exchange Act and rules and regulations thereunder. A registered clearing agency is required to file with the Commission any proposed rule or proposed change in, addition to, or deletion from the registered clearing agency's rules.[17] The Commission publishes all proposed rule changes for comment and reviews them. Proposed rule changes are generally required to be approved by the Commission prior to going into effect; however, certain types of proposed rule changes take effect upon filing with the Commission.[18] When reviewing a proposed rule change, the Commission considers the submissions of the clearing agency together with any comments received on the proposed rule change in making a determination of whether the proposed rule change is consistent with the requirements of the Exchange Act. In addition, Section 17A of the Exchange Act further provides the Commission with authority to adopt rules as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act and prohibits a clearing agency from engaging in any activity in contravention of such rules and regulations.[19]

In addition, Commission staff conducts examinations of registered and exempt clearing agencies to assess, among other things, existing and emerging risks, compliance with applicable statutory and regulatory requirements (including any terms and conditions set forth in an order granting registration or an exemption from registration), and a clearing agency's oversight of compliance by its participants with its rules. Section 21(a) of the Exchange Act provides the Commission with authority to initiate and conduct investigations to determine if there have been violations of the federal securities laws.[20] Section 19(h) of the Exchange Act also provides the Commission with authority to institute civil actions seeking injunctive and other equitable remedies and/or administrative proceedings arising out of such investigations.[21]

2. Dodd-Frank Act

Title VII of the Dodd-Frank Act provides the Commission with authority to regulate certain over-the-counter (''OTC'') derivatives. Specifically, Title VII added provisions to the Exchange Act that (i) require entities performing the functions of a clearing agency with respect to security-based swaps (''security-based swap clearing agencies'') to register with the Commission, and (ii) direct the Commission to adopt rules with respect to security-based swap clearing agencies.[22]

The Clearing Supervision Act, enacted in Title VIII of the Dodd-Frank Act, provides for the enhanced regulation of certain financial market utilities (''FMUs'').[23] FMUs include clearing agencies that manage or operate a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the FMU.[24] FSOC has designated certain FMUs as systemically important or likely to become systemically important (''SIFMUs'').[25] SIFMUs are required to file 60-days advance notice of changes to rules, procedures, and operations that could materially affect the nature or level of risk presented by the SIFMU (''advance notice'').[26] The Clearing Supervision Act authorizes the Commission to object to changes proposed in such an advance notice, which would prevent the clearing agency from implementing the change.[27] The Clearing Supervision Act also provides for enhanced coordination between the Commission and FRB by allowing for regular on-site examinations and information sharing.[28] The Clearing Supervision Act further provides that the Commission and CFTC shall coordinate with the FRB to jointly develop risk management supervision programs for SIFMUs.[29] In

[14] *See* 15 U.S.C. 78q–1(b)(1).

[15] *See* 17 CFR 240.17a–1(a) through (c); *see also* 15 U.S.C 78q(a)(1), (2).

[16] Upon registration, registered clearing agencies are SROs under Section 3(a)(26) of the Exchange Act. *See* 15 U.S.C. 78c(a)(26).

[17] An SRO must submit proposed rule changes to the Commission for review and approval pursuant to Rule 19b–4 under the Exchange Act. A stated policy, practice, or interpretation of an SRO, such as its written policies and procedures, would generally be deemed to be a proposed rule change. *See* 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4.

[18] *See* 15 U.S.C. 78s(b)(3)(A) (setting forth the types of proposed rule changes that take effect upon filing with the Commission). The Commission may temporarily suspend those rule changes within 60 days of filing and institute proceedings to determine whether to approve or disapprove the rule changes. *See* 15 U.S.C. 78s(b)(3)(C).

[19] *See* 15 U.S.C. 78q–1(d).

[20] *See* 15 U.S.C. 78u(a).

[21] *See* 15 U.S.C. 78s(h).

[22] *See* 15 U.S.C. 78q–1(i), (j); Dodd-Frank Act, Sec. 763(b), 124 Stat. at 1768–69 (adding paragraphs (i) and (j) to Section 17A of the Exchange Act).

[23] The objectives and principles for the risk management standards prescribed under the Clearing Supervision Act shall be to (i) promote robust risk management; (ii) promote safety and soundness; (iii) reduce systemic risks; and (iv) support the stability of the broader financial system. Further, the Clearing Supervision Act states that the standards may address areas such as risk management policies and procedures; margin and collateral requirements; participant or counterparty default policies and procedures; the ability to complete timely clearing and settlement of financial transactions; capital and financial resources requirements for designated FMUs; and other areas that are necessary to achieve the objectives and principles described above. *See* 12 U.S.C. 5464(b), (c).

[24] *See* 12 U.S.C. 5462(6). The definition of ''financial market utility'' in Section 803(6) of the Clearing Supervision Act contains a number of exclusions that include, but are not limited to, certain designated contract markets, registered futures associations, swap data repositories, swap execution facilities, national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, security-based swap execution facilities, brokers, dealers, transfer agents, investment companies, and futures commission merchants. *See* 12 U.S.C. 5462(6)(B).

[25] *See* 12 U.S.C. 5463. An FMU is systemically important if the failure of or a disruption to the functioning of such FMU could create or increase the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system. *See* 12 U.S.C. 5462(9).

[26] *See* 12 U.S.C. 5465(e)(1)(A); 17 CFR 240.19b–4(n). The Commission published a final rule concerning the filing of advance notices for designated clearing agencies in 2012. *See* Exchange Act Release No. 34–67286 (June 28, 2012), 77 FR 41602 (July 13, 2012); *see also* 17 CFR 240.17Ad–22(a)(8) (defining ''designated clearing agency'').

[27] *See* 12 U.S.C. 5465(e).

[28] *See* 12 U.S.C. 5466.

[29] *See* 12 U.S.C. 5472; *see also* Risk Management Supervision of Designated Clearing Entities (July

addition, the Clearing Supervision Act provides that the Commission and CFTC may each prescribe risk management standards governing the operations related to payment, clearing, and settlement activities (''PCS activities'') of SIFMUs for which each is the supervisory agency, in consultation with the FSOC and FRB and taking into consideration relevant international standards and existing prudential requirements.[30]

3. Rule 17Ad–22

In 2012, the Commission adopted Rule 17Ad–22 under the Exchange Act to strengthen the substantive regulation of registered clearing agencies, promote the safe and reliable operation of registered clearing agencies, and improve efficiency, transparency, and access to registered clearing agencies.[31] At that time, the Commission noted that the implementation of Rule 17Ad–22 would be an important first step in developing the regulatory changes contemplated by Titles VII and VIII of the Dodd-Frank Act.[32] In this regard, Rule 17Ad–22(b) established certain requirements for clearing agencies that provide CCP services, and Rule 17Ad–22(d) established requirements for the operation and governance of all registered clearing agencies.[33]

Contemporaneously with this proposal, the Commission has taken another step in its development of an enhanced regulatory regime for clearing agencies and expanded the requirements under Rule 17Ad–22 by adopting new paragraph (e).[34] Rule 17Ad–22(e) builds on the existing framework by establishing requirements for registered clearing agencies that meet the definition of a ''covered clearing agency,'' as discussed further below. Rule 17Ad–22(e) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to address the following topics concerning its operation and governance:

- General organization (including legal basis, governance, a framework for the comprehensive management of risks, and recovery planning);
- financial risk management (including credit risk, collateral, margin, and liquidity risk);
- settlement (including settlement finality, money settlements, and physical deliveries);
- CSDs and exchange-of-value settlement systems;
- default management (including default rules and procedures and segregation and portability);
- business and operational risk management (including general business risk, custody and investment risks, and operational risk);
- access (including access and participation requirements, tiered participation arrangements, and links);
- efficiency (including efficiency and effectiveness and communication procedures and standards); and
- transparency.

As described in the CCA Standards adopting release, a covered clearing agency is subject to the requirements in Rule 17Ad–22(e), whereas a registered clearing agency that is not a covered clearing agency is subject to the requirements in Rule 17Ad–22(d).[35] As noted in the CCA Standards adopting release, the Commission continues to believe that the availability of Rules 17Ad–22(d) and (e) help ensure that the Commission can efficiently regulate registered clearing agencies depending on the specific activity and risks that each type of clearing agency poses to the U.S. markets.[36] In particular, Rule 17Ad–22(d) provides a set of requirements for registered clearing agencies that are not covered clearing agencies. The Commission expects to continue to use these two sets of requirements to regulate the national system for clearance and settlement as the varied entities that constitute it, including both covered clearing agencies and registered clearing agencies that are not covered clearing agencies, continue to emerge and evolve.

B. Distinctions Among Clearing Agencies

Section 17A of the Exchange Act was adopted in response to the paperwork crisis of the late 1960s that nearly brought the securities industry to a standstill and directly or indirectly resulted in the failure of large numbers of broker-dealers because the industry's clearance and settlement procedures were inefficient and lacked automation.[37] When Congress added Section 17A to the Exchange Act as part of the Securities Acts Amendments of 1975, it made the following four findings: (i) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors; (ii) inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors; (iii) new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement; and (iv) the linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.[38] Congress therefore directed the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.[39] The Commission's ability to achieve these goals and its supervision of the national system for clearance and settlement is based upon

2011), *available at https://www.federalreserve.gov/publications/other-reports/files/risk-management-supervision-report-201107.pdf* (describing the joint supervisory framework of the Commission, CFTC, and FRB) (''Risk Management Supervision Report'').

[30] *See* 12 U.S.C. 5464(a)(2). The Commission notes that, under Rule 17Ad–22(a)(8), a SIFMU for which the Commission is the supervisory agency is a ''designated clearing agency.'' *See* 17 CFR 240.17Ad–22(a)(8).

[31] *See* Exchange Act Release No. 34–71699 (Mar. 12, 2014), 79 FR 16865 (Mar. 26, 2014), *corrected at* 79 FR 29507, 29513 (May 22, 2014) (''CCA Standards proposing release''); *see also* 17 CFR 240.17Ad–22; Exchange Act Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219, 66225–26 (Nov. 2, 2012) (''Clearing Agency Standards adopting release'').

[32] *See* Clearing Agency Standards adopting release, *supra* note 31, at 66224–25.

[33] *See* 17 CFR 240.17Ad–22(b), (d).

[34] *See* CCA Standards adopting release, *supra* note 7, at 463–477.

[35] *See* CCA Standards adopting release, *supra* note 7, at 36–40. Rule 17Ad–22(d) sets forth minimum requirements for the operation and governance of registered clearing agencies. Under this rule proposal, all registered clearing agencies and covered clearing agencies would remain subject to the requirements in Section 17A of the Exchange Act and the relevant Commission rules and regulations thereunder, including Rules 17Ad–22(a) and (c). Covered clearing agencies would also remain subject to Rule 17Ad–22(e), and registered clearing agencies that are not covered clearing agencies would remain subject to Rule 17Ad–22(d). Registered clearing agencies that provide CCP services would also remain subject to Rule 17Ad–22(b).

[36] *See id.* at 38.

[37] The paperwork crisis resulted from sharply increased trading volumes and historic industry inattention to securities processing, as demonstrated by inefficient, duplicative and highly manual clearance and settlement system, poor records, insufficient controls over funds and securities, and use of untrained personnel to perform processing functions. *See, e.g.,* Commission, Study of Unsafe and Unsound Practices of Brokers and Dealers, H.R. Doc. No. 231, 92d Cong., 1st Sess. 13 (1971).

[38] *See* 15 U.S.C. 78q–1(a)(1)(A) through (D).

[39] *See* 15 U.S.C. 78q–1 *et seq.; see also supra* note 8.

the regulation of the various entities that operate as clearing agencies.

In defining ''clearing agency,'' Section 3(a)(23) of the Exchange Act contemplates a broad variety of roles and functions. Pursuant to Section 3(a)(23), a ''clearing agency'' is any person who does the following:

- Acts as an intermediary in making payments or deliveries or both in connection with securities transactions;
- provides facilities for the comparison of data regarding the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities;
- 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 (such as a securities depository); or
- otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates (such as a securities depository).[40]

From these broad categories, a number of different types of clearing agencies have emerged under the Commission's regulatory oversight of the national system for clearance and settlement.[41] As discussed below, the Commission's historical approach in drawing distinctions among the various clearing agencies operating within the national system for clearance and settlement has, to a large degree, been predicated on the range of clearing agency functions performed within that system and whether, in response to these and other elements, the appropriate regulatory response is registration or an exemption from registration. Where registration is required, the complete set of regulation adopted by the Commission pursuant to its authority under Section 17A of the Exchange Act applies. As discussed above, those clearing agencies that perform on a broad basis CCP and CSD services have been required to register and are subject to the full range of Commission rules and regulations for clearing agencies.[42] Where the Commission has granted an exemption from registration, exemptive conditions tailored to the particular clearing agency functions performed by the clearing agency operate as the primary regulatory requirements.

1. Registered Clearing Agencies

Three common functions of registered clearing agencies are the functions of a CCP, CSD, and SSS. Each is described below.

A clearing agency performs the functions of a CCP when it interposes itself between the counterparties to a trade, acting functionally as the buyer to every seller and the seller to every buyer.[43] Currently, CCPs make up five of the six active clearing agencies registered with the Commission, and four of those five CCPs are covered clearing agencies subject to Rule 17Ad–22(e).[44]

A clearing agency performs the functions of a CSD 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 lending of securities without physical delivery of securities certificates.[45] A CSD may also provide asset services, which may include the administration of corporate actions and redemptions. One of the six active registered clearing agencies provides securities depository services for the U.S. securities markets and is commonly referred to as a CSD.[46] This clearing agency providing CSD services is also a covered clearing agency subject to Rule 17Ad–22(e).

A clearing agency also may perform the functions of an SSS. An SSS is generally understood to be a clearing agency that enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules.[47] In the Commission's experience, SSS functions may be performed in a single registered clearing agency that also provides CSD services. For example, on prior occasions the Commission has included book-entry transfers as among the functions of a CSD.[48] In the U.S. securities markets, such functions are currently performed by the one registered clearing agency providing securities depository services noted above, which is a covered clearing agency subject to Rule 17Ad–22(e).[49]

Five of the six active registered clearing agencies noted above are SIFMUs—*i.e.,* they have been designated systemically important by FSOC pursuant to the Clearing Supervision Act.[50] As previously discussed, the Clearing Supervision Act provides for, among other things, the enhanced regulation of SIFMUs, reflecting the fact that such entities are critical market infrastructures that may pose a systemic risk to the U.S. financial system. Each of the SIFMUs have

[40] *See* 15 U.S.C. 78c(a)(23)(A); *see also supra* note 10 and accompanying text. In light of its potential breadth, the definition excludes, among others, any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association. *See* 15 U.S.C. 78c(a)(23)(B)(ii).

[41] In addition to those discussed below in Part I.B, the Commission has also previously stated that entities called ''clearing corporations'' fall within the definition of ''clearing agency'' under the Exchange Act. Clearing corporations provide a range of clearance and settlement services but may not necessarily fall within the definition of ''CCP'' or ''CSD.'' *See* Exchange Act Release No. 20221 (Sept. 23, 1983), 48 FR 45167 (Oct. 3, 1983) (order approving the clearing agency registration of four depositories and four clearing corporations).

[42] The Commission has also granted an exemption from registration as a clearing agency to certain entities that perform a limited amount of CSD services for U.S. securities in certain instances. *See infra* note 54.

[43] *See* 17 CFR 240.17Ad–22(a)(1); Clearing Agency Standards adopting release, *supra* note 31, at 66229.

[44] The CCPs that make up five of the six active clearing agencies registered with the Commission are Fixed Income Clearing Corporation (''FICC''), ICE Clear Credit (''ICC''), ICE Clear Europe (''ICEEU''), National Securities Clearing Corporation (''NSCC''), and The Options Clearing Corporation (''OCC''). As discussed in more detail below, of those five CCP006ICC is the only CCP that is currently not a covered clearing agency subject to Rule 17Ad–22(e).

[45] *See* 15 U.S.C. 78c(a)(23)(A); 17 CFR 240.17Ad–22(a)(2).

[46] *See* 17 CFR 240.17Ad–22(a)(3); Clearing Agency Standards adopting release, *supra* note 31, at 66229. This registered clearing agency is the Depository Trust Company (''DTC'').

[47] *See* infra notes 83–88 and accompanying text (describing the range of services that a clearing agency may provide in connection with the settlement of securities transactions).

[48] *See, e.g.,* Clearing Agency Standards adopting release, *supra* note 31, at 66253.

[49] *See, e.g.,* Exchange Act Release No. 34–77991 (June 3, 2016), 81 FR 37232, 37232–33 (June 9, 2016) (notice describing in part the relationship between DTC's depository and book-entry services).

[50] On July 18, 2012, the FSOC designated as systemically important the following then-registered clearing agencies: CME Group (''CME''), DTC, FICC, ICC, NSCC, and OCC. The Commission is the supervisory agency for DTC, FICC, NSCC, and OCC, and the CFTC is the supervisory agency for CME and ICC. The Commission jointly regulates ICC and OCC with the CFTC. In addition, the Commission jointly regulates ICE Clear Europe (''ICEEU''), which has not been designated as systemically important by FSOC, with the CFTC and Bank of England. DTC, FICC, NSCC, OCC, and ICEEU are covered clearing agencies subject to Rule 17Ad–22(e).

generally been described as providing the services of a CCP or CSD.[51]

2. Exempt Clearing Agencies

In addition to registered clearing agencies, currently the Commission has granted exemptions from clearing agency registration to five exempt clearing agencies.[52] The Commission's exemptive orders contain tailored conditions that, among other things, take into account the range of clearing agency functions performed by each entity. Three exempt clearing agencies provide trade matching services, which are services that generally constitute comparison of data respecting the terms of settlement of securities transactions.[53] The remaining two exempt clearing agencies are non-U.S. entities that perform a limited range of clearing agency functions, including certain CSD and collateral management services.[54]

In addition, prior to the effective date of Title VII of the Dodd-Frank Act, the Commission issued a temporary exemption from the registration requirements for clearing agencies in Section 17A(b) of the Exchange Act to entities providing certain services, now sometimes referred to as post-trade processing services, for security-based swaps (''SBS exemption order'').[55] To date, six entities providing a range of such post-trade processing services are relying upon the SBS exemption order. The Commission stated that the exemptive order was necessary because the Dodd-Frank Act had expanded the definition of ''security'' to include security-based swaps, and therefore entities performing the functions of a clearing agency with respect to security-based swaps would be required to register under Section 17A(b)(1) of the Exchange Act upon the effective date of Title VII.[56] Those functions, as described by the Commission in the SBS exemption order, generally constitute certain collateral management, trade matching, and tear up or compression functions.[57]

II. Proposed Amendments Under Rule 17Ad–22

The Commission adopted Rule 17Ad–22(e) to strengthen the substantive regulation of clearing agencies, promote the safe and reliable operation of covered clearing agencies, and improve efficiency, transparency, and access to covered clearing agencies. 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.[58]

The Commission is proposing to expand the coverage of Rule 17Ad–22(e) so that all registered clearing agencies performing the functions of a CCP, CSD, or SSS would be subject to Rule 17Ad–22(e). To facilitate this amendment, the Commission is proposing in Part II.B a definition of ''securities settlement system'' and in Part II.C to amend the definition of ''central securities depository services.'' In addition, the Commission also is proposing in Part II.D to amend the definition of ''sensitivity analysis'' to expand its coverage, 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. In Part II.E, the Commission seeks comment on each of the proposed amendments.

A. Definition of ''Covered Clearing Agency''

Rule 17Ad–22(a)(5) currently defines a covered clearing agency as a registered clearing agency that: (i) has been designated as systemically important by the FSOC and for which the Commission is the supervisory agency under the Clearing Supervision Act (''designated clearing agency''); or (ii) provides CCP services for security-based swaps or is determined by the Commission to be involved in activities with a more complex risk profile (''complex risk profile clearing agency''), for which the CFTC is not the supervisory agency under the Clearing Supervision Act.[59] In the CCA Standards proposing release, the Commission sought comment on whether the scope of Rule 17Ad–22(e) was appropriate and whether the definition of ''covered clearing agency'' was appropriate and sufficiently clear given the requirements proposed.[60]

In the CCA Standards adopting release, the Commission took an important first step to establish coverage of the enhanced requirements in Rule 17Ad–22(e) over an initial group of registered clearing agencies. In light of the comments received on the CCA Standards proposing release, the Commission is now proposing to amend the definition of a ''covered clearing agency'' to broaden this coverage so that it encompasses all registered clearing agencies performing the functions of a CCP, CSD, or SSS. These functions are critical to the U.S. securities markets and the broader U.S. financial system and implicate the types of activities and risks that Rule 17Ad–22(e) is designed to address. Specifically, the Commission proposes that the definition of ''covered clearing agency'' be amended to mean a registered clearing agency that provides the services of a CCP, CSD, or SSS.

The Commission preliminarily believes that the proposed amendment to the ''covered clearing agency'' definition, which takes into account the specific functions performed by registered clearing agencies, would lead to greater regulatory consistency among

[51] *See, e.g.,* FSOC, 2012 Annual Report, at 163–187, *available at https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[52] The five exempt clearing agencies are Clearstream, Euroclear Bank SA/NV, Omgeo Matching Services—US, LLC, Bloomberg STP LLC, and SS&C Technologies, Inc. *See infra* notes 53–54 (citing the exemption orders for each).

[53] *See* Exchange Act Release No. 34–76514 (Nov. 24, 2015) 80 FR 75387 (Dec. 1, 2015) (''BSTP and SS&C exemption''); Exchange Act Release No. 34–44188 (Apr. 17, 2001), 66 FR 20494 (Apr. 23, 2001); *see also* Exchange Act Release No. 34–39829 (Apr. 6, 1998), 63 FR 17943 (Apr. 13, 1998) (providing interpretive guidance and requesting comment on the confirmation and affirmation of securities trades and matching).

[54] *See* Exchange Act Release No. 34–39643 (February 11, 1998), 63 FR 8232 (Feb. 18, 1998), *as modified by* Exchange Act Release No. 34–43775 (Dec. 28, 2000), 66 FR 819 (Jan. 4, 2001); Exchange Act Release No. 34–38328 (Feb. 24, 1997), 62 FR 9225 (Feb. 28, 1997).

[55] *See* Exchange Act Release No. 34–64796 (July 1, 2011), 76 FR 39963 (July 7, 2011).

[56] In addition, as part of its consideration of whether future rulemaking for post-trade processing clearing agencies would be appropriate, the Commission noted that it may consider whether to apply rules to clearing agencies engaged in PCS activities identified in the Clearing Supervision Act. *See* Clearing Agency Standards adopting release, *supra* note 31, at 66228. In particular, the Clearing Supervision Act identifies the following as PCS activities: (i) calculation and communication of unsettled financial transactions between counterparties; (ii) netting of transactions; (iii) provision and maintenance of trade, contract, or instrument information; (iv) management of risks and activities associated with continuing financial transactions; (v) transmittal and storage of payment instructions; (vi) movement of funds; (vii) final settlement of financial transactions; and (viii) other similar functions that the FSOC may determine. *See* 12 U.S.C. 5462(7); *see also supra* note 30 and accompanying text.

[57] An expanded explanation of these different functions can be found in the SBS exemption order. *See* SBS exemption order, *supra* note 55, at 39964.

[58] *See* CCA Standards adopting release, *supra* note 7, at 475–477, 463, 464–471, 474; *see also supra* note 34 and accompanying text.

[59] *See* 17 CFR 240.17Ad–22(a)(5).

[60] *See id.* at 29516–17.

all registered clearing agencies that perform these critical functions. Additionally, by focusing on functions rather than designation as systemically important, activities with a more complex risk profile, or the presence of another regulator, the proposed definition of ''covered clearing agency'' would ensure that all clearing agencies performing these critical functions are subject to enhanced requirements that address the particular services provided by and risks inherent in these critical functions.

1. Critical Functions Common among CCPs, CSDs, and SSSs

Although the definition of ''clearing agency'' in the Exchange Act is broad, there are certain activities which, by virtue of their significance to the U.S. financial system generally, and the national system for clearance and settlement in particular, support the application of enhanced requirements. Among these are those clearing agency activities that, at a general level, concern the concentration and management of risk and the potential transmission of systemic risk. Registered clearing agencies that provide CCP, CSD, or SSS services perform common functions that implicate the concentration and management of risk and the resulting systemic risk concerns. The Commission therefore believes that it is appropriate to propose to expand the definition of ''covered clearing agency'' to subject all such registered clearing agencies to Rule 17Ad–22(e) because Rule 17Ad–22(e) includes enhanced requirements that help mitigate the systemic risk concerns raised by these activities, such as a requirement for policies and procedures regarding a framework for the comprehensive management of such risk and requirements for policies and procedures that address, among other things, financial and general business risk management, settlement risks, and transparency.[61]

Financial risk management is an essential aspect of the role that each of these registered clearing agencies provides for the U.S. securities markets, both for their own participants and participants in the broader U.S. financial system. Establishing requirements for policies and procedures governing such risk management practices is a cornerstone of Rule 17Ad-22(e). For example, with respect to credit risk, Rule 17Ad–22(e)(4) requires that each covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes.[62] With respect to liquidity risk, Rule 17Ad–22(e)(7) requires that each covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis and its use of intraday liquidity.[63] Rule 17Ad–22(e)(5) and (6) also include enhanced requirements for policies and procedures to manage collateral and maintain a risk-based margin, with particular requirements that help to ensure resilient stress testing of a covered clearing agency's financial resources.[64]

General business risk is another potential risk that these types of registered clearing agencies, as entities that concentrate risk, must manage, and Rule 17Ad–22(e) includes enhanced requirements for policies and procedures that manage general business risk. Specifically, Rule 17Ad–22(e)(3) requires policies and procedures that provide for a comprehensive risk management framework that addresses a variety of risks, including both financial risk and general business risk.[65] Rule 17Ad–22(e)(15) further requires that each covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations as a going concern if those losses materialize.[66] Other requirements in Rule 17Ad–22(e) flow from the management of these risks as well. Notably, Rule 17Ad–22(e)(3) requires policies and procedures reasonably designed to ensure that a covered clearing agency establishes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[67] Rule 17Ad–22(e)(15) complements this requirement with requirements for policies and procedures reasonably designed to provide for holding liquid net assets funded by equity equal to the greater of either six months of its current operating expenses or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under Rule 17Ad–22(e)(3).[68] The Commission preliminarily believes that a registered clearing agency that provides CCP, CSD, or SSS services should be subject to enhanced requirements for maintaining policies and procedures that manage business risk and provide for recovery and wind-down plans. These enhanced business risk requirements would benefit not only the clearing agency but also participants and the public. Likewise, recovery and wind-down plans help ensure that CCPs, CSDs, SSSs, and policymakers can plan for and mitigate the potential systemic consequences of a wind-down or failure.

Facilitating settlement and mitigating settlement risks is another essential role played by these registered clearing agencies, CSDs and SSSs in particular, and another important component of Rule 17Ad–22(e) is enhanced requirements for policies and procedures governing settlement. For example, Rule 17Ad–22(e) includes requirements directed to settlement finality, physical delivery, and money settlements.[69] Importantly, it also includes rules with enhanced requirements for depository functions and settlement systems.[70]

[61] *See* 17 CFR 240.17Ad–22(e)(3) through (10), (15), (23).

[62] *See* 17 CFR 240.17Ad–22(e)(3). While Rule 17Ad–22(d) also includes some requirements for policies and procedures related to credit risk, Rule 17Ad–22(e) includes enhanced requirements related to, among other things, stress testing.

[63] *See* 17 CFR 240.17Ad–22(e)(7). Rule 17Ad–22(d) does not include requirements for policies and procedures related to the management of liquidity risk.

[64] *See* 17 CFR 240.17Ad–22(e)(5), (6).

[65] *See* 17 CFR 240.17Ad–22(e)(3). Rule 17Ad–22(d) does not include comparable requirements.

[66] *See* 17 CFR 240.17Ad–22(e)(15). Rule 17Ad–22(d) does not include requirements for policies and procedures related to the management of business risk.

[67] *See* 17 CFR 240.17Ad–22(e)(3)(ii).

[68] *See* 17 CFR 240.17Ad–22(e)(15)(ii).

[69] *See* 17 CFR 240.17Ad–22(e)(8), (9), (10).

[70] *See* 17 CFR 240.17Ad–22(e)(11). Rule 17Ad–22(d)(10) also includes requirements for policies and procedures related to the immobilization or dematerialization of securities certificates and the transfer of them by book entry, but does not include requirements for, among other things, policies and procedures relating to ensuring the integrity of securities issues, safeguarding the rights of securities issuers and holders, preventing the unauthorized creation or deletion of securities, or conducting periodic and at least daily

Providing transparency to the markets is another essential role that these registered clearing agencies facilitate in the markets they serve by each maintaining a set of rules and procedures that govern their participants, their clearance and settlement services, and their risk management framework. Each registered clearing agency that provides CCP, CSD, or SSS services has rules that, while they may vary according to the characteristics of the markets they serve, generally govern how they clear transactions or trades submitted by participants, calculate whether and how much each participant owes in margin or to the clearing or participant fund on either a gross or net basis, receive securities from participants that owe securities, deliver securities to participants that are owed securities, collect payments from participants that owe money, and pay participants that are owed money. Rule 17Ad–22(e)(23)(iv) also requires a covered clearing agency to have policies and procedures that provide for a comprehensive public disclosure of its material rules, policies, and procedures regarding the requirements in Rule 17Ad–22(e).[71] Increased transparency helps market participants manage their risks, thereby reducing systemic risk concerns across the U.S. financial system.

Each of the above roles, common across the registered clearing agencies that provide CCP, CSD, and SSS services, is addressed by the enhanced requirements in Rule 17Ad–22(e), and therefore the Commission believes that expanding the definition of ''covered clearing agency'' to include those registered clearing agencies that are integral in either performing these functions or managing these risks, as appropriate, will help to further strengthen the national system for clearance and settlement and help to further mitigate risk to the broader U.S. financial system.

2. Critical Functions Specific to CCPs, CSDs, or SSSs

In addition to the critical roles common across CCPs, CSDs, and SSSs, each such clearing agency also performs unique functions that support expanded coverage of the ''covered clearing agency'' definition and, through it, application of Rule 17Ad–22(e) to such clearing agencies because, as discussed further below, Rule 17Ad–22(e) also includes enhanced requirements with respect to these functions.

First, with respect to CCPs, the Commission is proposing that the definition of ''covered clearing agency'' be expanded so that CCPs would be subject to Rule 17Ad–22(e) in all circumstances. The Commission has, on previous occasions, noted that increasing reliance by market participants on CCPs supports the application of enhanced regulatory requirements that address the risks posed by such activity.[72] For example, market participants may rely on CCPs because clearing and settling a high volume of financial transactions multilaterally through a CCP can allow for greater efficiency and lower costs than settling bilaterally.[73] In addition, CCPs are often able to manage risks for their participants related to the clearing and settling of financial transactions more effectively, and, in some cases, reduce certain risks such as the risk that a purchaser of a security will not receive the security or that a seller of a security will not receive payment for the security.[74] CCPs have also become increasingly important given the mandated central clearing of certain swaps and security-based swaps that is required by the Dodd-Frank Act.[75]

CCPs confer certain benefits to the markets in which they operate, but can also pose substantial risk not only to individual market participants but also to the broader financial system, due in part to the fact that central clearing concentrates risk. Disruption to such functions, or failure on the part of the clearing agency to meet its obligations, could, result in significant costs to the clearing agency itself and its members and create a potential source of contagion affecting other market participants or the broader U.S. financial system.[76] As a result, proper management 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. Each CCP determines how best to manage its credit and liquidity risks, consistent with its regulatory framework and as appropriate for the products it clears and the market it serves. For example, participants must meet membership requirements to join a CCP. Each CCP determines who meets its membership criteria and continues to monitor its membership to ensure that the members continue to meet these criteria. Similarly, each CCP is responsible for determining its own margin models and ensuring that each member meets its obligations under the margin models. When the Commission adopted Rule 17Ad–22(e), it sought to impose enhanced requirements to an initial group of registered clearing agencies that concentrated risk because they were either designated systemically important or engaged in activities with a more complex risk profile. Now, the Commission believes it is appropriate to propose to expand the coverage of the ''covered clearing agency'' definition to include all CCPs because, as described above, CCP operations generally concentrate risk and can also act as a transfer mechanism for risk, and Rule 17Ad–22(e) includes enhanced requirements that help mitigate the risks that CCP functions carry. In particular, Rule 17Ad–22(e) includes requirements

reconciliation of securities issues. *See* 17 CFR 240.17Ad–22(d)(10).

[71] *See* 17 CFR 240.17Ad–22(e)(23)(iv). No comparable requirement exists in Rule 17Ad–22(d).

[72] *See* CCA Standards adopting release, *supra* note 7, at 257–264; Clearing Agency Standards adopting release, *supra* note 31, at 66264–65 (noting, among other things, that the effectiveness of a CCP's risk controls and the adequacy of its financial resources are critical aspects of the infrastructure of the market it serves).

[73] *See, e.g.,* Risk Management Supervision Report, *supra* note 29, at 8.

[74] *See, e.g., id.* at 8.

[75] *See, e.g., id.* at 3.

[76] *See generally* Darrell Duffie, Ada Li & Theo Lubke, Policy Perspectives on OTC Derivatives Market Infrastructure, at 9 (Fed. Reserve Bank N.Y. Staff Reps., Mar. 2010), *available at 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, Policy Analysis, No. 655, at 11–14, 16–17, 24–26 (2010), *available at http://www.cato.org/pubs/pas/PA665.pdf*, at 11–14, 16–17, 24–26 (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 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); Manmohan Singh, Making OTC Derivatives Safe—A Fresh Look, at 5–11 (IMF Working Paper, Mar. 2011), *available at 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); Domanski, Dietrich, Leonardo Gambacorta, and Cristina Picillo. ''Central clearing: trends and current issues.'' BIS Quarterly Review December (2015), *available at https://www.bis.org/publ/qtrpdf/r_qt1512g.pdf* (describing links between CCP financial risk management and systemic risk); Wendt, Froukelien, Central counterparties: addressing their too important to fail nature (2015), *available at http://papers.ssrn.com/sol3/Delivery.cfm/wp1521.pdf?abstractid=2568596&mirid=1&type=2* (assessing the potential channels for contagion arising from CCP interconnectedness).

for the management of credit and liquidity risk, the development of recovery and wind-down plans, and tiered participation arrangements,[77] and the Commission believes that applying these requirements to all CCPs will help further mitigate systemic risk to the U.S. financial system.

Second, the Commission is similarly proposing that a clearing agency providing CSD services also be a covered clearing agency. The Commission has noted on previous occasions the importance of CSDs to the U.S. securities markets. For example, the Commission has noted that CSDs are critical elements of the national system for clearance and settlement,[78] and that the establishment of consistent standards for CCP and CSD operations is an important goal that underpinned the enactment of Section 17A of the Exchange Act.[79] CSDs play a key role in modern financial markets, where, for many issuers, transactions in securities often involve no transfer of physical certificates.[80] Such paperless trading generally improves transactional efficiency but for such benefits to accrue, market participants must have confidence that CSDs can correctly account for the number of securities in their custody and for the book entries that allocate securities across participant accounts. The Commission therefore is proposing that CSDs also be subject to Rule 17Ad–22(e) in all circumstances because of the important role they play in the national system for clearance and settlement of securities. Rule 17Ad–22(e)(11) established enhanced requirements specific to CSDs. Rule 17Ad–22(e)(11)(i) requires a covered clearing agency that provides central securities depository (''CSD'') services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain securities in an immobilized or dematerialized form for their transfer by book entry, ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities. Rule 17Ad–22(e)(11)(ii) requires a covered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to implement internal auditing and other controls to safeguard the rights of securities issuers and holders, prevent the unauthorized creation or deletion of securities, and conduct periodic and at least daily reconciliation of securities issues it maintains. Finally, Rule 17Ad–22(e)(11)(iii) requires a covered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to protect assets against custody risk through appropriate rules and procedures consistent with relevant laws, rules, and regulations in jurisdictions where it operates.[81] In addition, Rule 17Ad–22(e) generally strengthens the substantive regulations of clearing agencies through, among other things, requirements for the comprehensive management of risk and the development of recovery and wind-down plans, which are equally important to CSDs.[82] Therefore, the Commission believes that applying Rule 17Ad–22(e) to all clearing agencies providing CSD services will further help mitigate risk to the U.S. financial system.

Lastly, while in the U.S. securities markets the functions of an SSS are typically performed by a registered clearing agency that also provides CSD services, the Commission has also noted that clearing agencies provide a broad range of services in connection with the settlement of securities transactions.[83] For example, the Commission has previously noted that clearing agencies ''provide differing clusters of services for their participants.'' [84] In particular, ''[c]learing corporations generally receive trade data respecting exchanges or [over-the-counter] trades between broker-dealers and compare, account for and settle the netted securities transactions.'' [85] Over the years, the Commission has registered a number of entities as clearing agencies that provide a variety of securities settlement services. These services include facilitating the settlement of transactions executed by specialists on an exchange,[86] providing clearance and settlement services for mortgage-backed securities transactions,[87] and facilitating the clearance and settlement of cross-border transactions.[88] These SSSs play a vital role in fostering the proper functioning of financial markets, but if they are not effectively managed they have the potential to act as transmission channels for financial shocks, particularly on days of market stress.

The Commission also believes that a clearing agency providing SSS services can raise credit, market, and operational risk concerns.[89] The Commission preliminarily believes that these functions, whether performed independently or consolidated with other clearing agency functions in a single registered clearing agency, support application of the enhanced standards in Rule 17Ad–22(e).[90] In recent years, the Commission has adopted requirements for the policies and procedures of certain clearing agencies under Rule 17Ad–22 to help achieve delivery versus payment and eliminate principal risk,[91] both of which relate to the provision of SSS services. The Commission adopted Rule 17Ad–22(e) to strengthen the substantive regulations applicable to clearing agencies to address, among other things, credit, market, and operational risk. Because SSS operations present these types of risk, the Commission is proposing to apply Rule 17Ad–22(e) to all entities performing these SSS functions.

[77] *See* 17 CFR 240.17Ad–22(e)(4), (7), (19).

[78] *See* BSTP and SS&C exemption, *supra* note 53, at 75398 (noting that a CSD is ''a critical element of the national system for clearance and settlement'').

[79] *See* Clearing Agency Standards adopting release, *supra* note 34, at 66273.

[80] *See* CCA Standards proposing release, *supra* note 31, at 29603.

[81] *See* CCA Standards adopting release, *supra* note 7, at 472.

[82] *See id*. at 91–105 (describing the requirements under Rule 17Ad–22(e)(3)).

[83] *See* Exchange Act Release No. 34–20221 (Sept. 23, 1983), 48 FR 45167, 45169 & n.32 (Oct. 3, 1983) (in describing the accounting processes that generate securities settlement obligations, distinguishing NSCC's ''continuous net settlement'' system from a ''daily balance order'' system); Exchange Act Release No. 34–21335 (Sept. 20, 1984), 49 FR 37879, 37879 (Sept. 26, 1984) (in describing the functions performed by the Boston Stock Exchange Clearing Corporation (''BSECC''), noting that BSECC transmits data to NSCC for processing and collects and pays members' daily settlement obligations at NSCC and DTC);

[84] *See* 48 FR at 45169.

[85] *See id*. (citations omitted).

[86] *See id*. at 45173–77 (approving the registration of the Stock Clearing Corporation of Philadelphia subject to conditions).

[87] *See* Exchange Act Release No. 34–24046 (Feb. 2, 1987), 52 FR 4218 (Feb. 10. 1987) (order granting registration as a clearing agency to MBS Clearing Corporation).

[88] *See* Exchange Act Release No. 34–26812 (May 12, 1989), 54 FR 21691 (May 19, 1989) (order approving temporary registration as a clearing agency of the International Securities Clearing Corporation).

[89] The Commission notes that, currently, no registered clearing agency provides only SSS services in the United States. Nonetheless, the Commission preliminarily believes that SSSs, because they are financial market infrastructures that provide centralized services similar to CCPs and CSDs, can also serve as potential transmission mechanisms for systemic risk and should therefore also be subject to the same requirements as CCPs and CSDs. In this regard, the Commission notes that Rule 17Ad–22(e)(12) includes requirements specific to settlement systems. *See* CCA Standards adopting release, *supra* note 7, at 472.

[90] *See generally* Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94–75, at 5, 91 (recognizing book-entry transfer as one of three basic clearing agency functions before consolidating it, along with clearing and the transfer of record ownership, into a single definition of ''clearing agency'' in the Exchange Act).

[91] *See* 17 CFR 240.17Ad–22(d)(13), (e)(12).

3. Increasing Scrutiny of CCP, CSD, and SSS Functions

In response to the CCA Standards proposing release, the Commission received a number of comments on the proposed scope of the definition of covered clearing agency asking the Commission to expand the scope of the covered clearing agency definition and therefore the coverage of Rule 17Ad–22(e).[92] Specifically, one commenter endorsed efforts to promote financial stability through the application of heightened standards for covered clearing agencies, particularly those that provide CCP services for security-based swaps and other derivatives, noting that the mandatory clearing of OTC derivatives introduced following the 2008 financial crisis has heightened the need for enhanced standards for CCPs.[93] A second commenter suggested that the Commission apply Rule 17Ad–22(e) to all clearing agencies to reduce the risk of failure and the problems such a failure would cause for investors, citing the size of the derivatives markets, and the potential for disruption and systemic risk that these markets may have on covered clearing agencies.[94] A third commenter recommended that any provision of the proposed rules that reflects best practices should be applied across all clearing agencies.[95] Each of these comments supports an approach under which registered clearing agencies are subject to the enhanced standards in Rule 17Ad–22(e) where they perform critical clearing agency functions that concentrate risk and could serve as mechanisms for the transfer of systemic risk. Consistent with these comments, the proposed application of Rule 17Ad–22(e) to all registered clearing agencies that provide CCP, CSD, and SSS services would strengthen the Commission's substantive regulation of clearing agencies by imposing enhanced requirements for risk management policies and procedures that help mitigate systemic risk.

In contrast to the above commenters, one commenter endorsed the Commission's adopted definition of ''covered clearing agency'' and supported not applying Rule 17Ad–22(e) to registered clearing agencies that were dually registered with the CFTC and SEC, where the CFTC is the supervisory authority under the Clearing Supervision Act.[96] The commenter also believed that subjecting a dually registered clearing agency to requirements under Rule 17Ad–22(e) and the CFTC's regime would result in duplicative regulation.[97] The Commission preliminarily believes that, as discussed in Part II.A.4 below, although the proposed amendment to the definition of ''covered clearing agency'' would subject some dually registered clearing agencies to similar regulations under the Commission's and CFTC's comparable regimes, expanding the definition to include dually registered clearing agencies is nonetheless appropriate.

4. Expanded Coverage Under the Definition of ''Covered Clearing Agency''

The proposed amendment to the definition of ''covered clearing agency'' would differ in two ways from the existing definition of ''covered clearing agency.'' First, it would no longer reference whether a clearing agency has been designated systemically important by the FSOC and for which the Commission is the supervisory agency under the Clearing Supervision Act. Second, it would remove references to clearing agencies that provide CCP services for security-based swaps or are involved in activities the Commission determines to have a more complex risk profile, unless the CFTC is the supervisory agency under the Clearing Supervision Act. Amending the definition of ''covered clearing agency'' in this way would replace these two categories of clearing agencies with clearing agencies providing the services of a CCP, CSD, or SSS and thereby expand the range of entities that fall within the definition of ''covered clearing agency.'' Accordingly, under the proposed amendment to the definition, whether a registered clearing agency is a SIFMU or dually registered with the Commission and the CFTC would no longer be relevant to application of the ''covered clearing agency'' definition or Rule 17Ad–22(e).

Thus, the potential for registered clearing agencies to be subject to Rule 17Ad–22(e) would increase under the proposed amendment. In particular, under the proposed amendment to the definition, the narrower set of complex risk profile clearing agencies for which the CFTC is not the supervisory agency would be replaced with the full universe of registered clearing agencies that provide CCP, CSD, or SSS services. In light of the discussion above regarding the critical functions common among and specific to CCPs, CSDs, and SSSs, the Commission preliminarily believes that such an expansion is appropriate in order to help further mitigate systemic risk to the U.S. financial system.

Preliminarily, the Commission believes that such an approach is appropriate even though it may subject clearing agencies that are dually registered with the Commission and CFTC to similar requirements in some instances. In this regard, the Commission first notes that the staff has consulted with the CFTC, FRB, and FSOC in the development of these rules to, in part, avoid unnecessarily duplicative or inconsistent regulation with respect to clearing agencies that are dually registered in the United States. With respect to such clearing agencies—as well as clearing agencies regulated by authorities in other jurisdictions—the Commission is nonetheless mindful, pursuant to the comprehensive framework for regulating swaps and security-based swaps established in Title VII, that the SEC has been given regulatory authority over security-based swaps.[98] CCPs that clear security-based swaps present risks to the securities markets that must be subject to appropriate risk management. As noted in the CCA Standards adopting release, the Commission's intent with respect to Rule 17Ad–22(e) was, in part, to take an incremental step under Rule 17Ad–22 to ensure that these risks are appropriately managed consistent with the purposes of the Exchange Act, the Clearing Supervision Act, and Title VII of the Dodd-Frank Act.[99] The Commission believes that the proposed amendments to the definition of ''covered clearing agency'' represent another incremental step to help ensure that these risks are appropriately managed consistent with each of the above statutes. The Commission has, through Rule 17Ad–22(e) sought to apply requirements commensurate and appropriate to the risk posed by the clearing agency functions and activities specific to

[92] *See* CCA Standards adopting release, *supra* note 7, at 53–65.

[93] *See* The Clearing House at 1.

[94] *See* CFA Institute at 2.

[95] *See* DTCC at 4.

[96] *See* CME at 2.

[97] *See id.*

[98] This dual framework for the regulation of CCPs for swaps and security-based swaps by the Commission and the CFTC was recently recognized by the European Commission in its equivalence decision for the CFTC. The European Commission has indicated that it will conduct a separate equivalence analysis for CCPs clearing securities and security-based swaps. *See* Commission Implementing Decision (EU) 2016/377 of 15 March 2016 on the equivalence of the regulatory framework of the United States of America for central counterparties that are authorised and supervised by the CFTC to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council, *available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016D0377.*

[99] *See* CCA Standards adopting release, *supra* note 7, at 45.

covered clearing agencies as they exist in, and serve, the U.S. securities markets. The Commission acknowledges that other rules and regulations may apply to a covered clearing agency that are similar in scope or purpose to Rule 17Ad–22(e). However, the presence of similar regulations does not negate the Commission's obligation to ensure that risk in the U.S. securities markets is appropriately managed consistent with the purposes of the Exchange Act, the Clearing Supervision Act, and Title VII of the Dodd-Frank Act. Further, because Rule 17Ad–22(e) and other comparable regulations—including those of the CFTC—are consistent with the same international standards,[100] the potential for inconsistent regulation is low.

Further, in the CCA Standards adopting release, the Commission addressed comments regarding the risk of duplicative regulation that may result for clearing agencies dually registered with the Commission and the CFTC,[101] and noted that the Commission has previously addressed concerns about duplication in the rule filing process by streamlining the process under Rule 19b–4 for dually registered clearing agencies.[102] Specifically, for rule filings that primarily concern the clearing operations of a registered clearing agency that do not pertain to securities clearing operations but only to clearing of products under the authority of the CFTC, the Commission made a policy decision to provide a streamlined process for such rule filings to become effective upon filing with the Commission, without pre-effective notice and opportunity for comment.[103]

Finally, with respect to the proposed removal of designated clearing agencies from the ''covered clearing agency'' definition, the Commission notes that each designated clearing agency under Title VIII provides either CCP or CSD services and, therefore, would remain a covered clearing agency under the proposed amendment to the definition of ''covered clearing agency.'' [104] Moreover, the proposed shift to a function-oriented definition of ''covered clearing agency'' would not cause any of the registered clearing agencies that currently fall within the definition to be excluded. DTC, FICC, ICEEU, NSCC, and OCC all perform CCP, CSD, and/or SSS services.

The proposed amendment to the definition would expand the scope of covered clearing agencies by one additional clearing agency, ICC. Although ICC is a designated SIFMU and provides CCP services for security-based swaps, the CFTC is its supervisory agency, so it is not a covered clearing agency under the adopted definition.

B. Definition of ''Securities Settlement System''

To facilitate the proposed amendment to the definition of ''covered clearing agency,'' the Commission is also proposing 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. The Commission understands that this is the generally accepted meaning of the term.[105] The Commission preliminarily believes that this definition appropriately captures the critical functions performed by SSSs described above, including the role that SSSs have in concentrating and managing risk on behalf of their participants. The proposed definition would, among other things, include a clearing agency that facilitates the settlement of transactions executed by specialists on an exchange, provides clearance and settlement services for mortgage-backed securities transactions, or facilities the clearance and settlement of cross-border transactions.[106]

C. Definition of ''Central Securities Depository''

Consistent with the proposed amendment to the definition of ''covered clearing agency,'' and to improve consistency with both the definition of ''central counterparty'' in Rule 17Ad–22(a)(2) and the proposed definition of ''securities settlement system,'' the Commission is proposing to amend the definition of ''central securities depository services'' in Rule 17Ad–22(a)(3). Rule 17Ad–22(a)(3) as adopted defines ''central securities depository services'' to mean services of a clearing agency that is a securities depository as described in Section 3(a)(23)(A) of the Exchange Act. The Commission is proposing to amend Rule 17Ad–22(a)(3) so that it would instead 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.

This modification would not alter the meaning of Rule 17Ad–22(a)(3) other than to improve consistency with (i) the definition of ''central counterparty'' and its use throughout Rule 17Ad–22, and (ii) the proposed definition of ''securities settlement system'' and its proposed use under Rule 17Ad–22. The Commission preliminarily believes that this proposed modification is therefore appropriate so that the definition of ''covered clearing agency'' is workable.

D. Definition of ''Sensitivity Analysis''

The Commission is also proposing to amend the definition of ''sensitivity analysis'' under Rule 17Ad–22 to remove the reference to ''a covered clearing agency involved in activities with a more complex risk profile'' from paragraph (ii). Pursuant to the proposed amendment, all covered clearing agencies that are CCPs, rather than just those involved in activities with a more complex risk profile, as part of developing and maintaining policies and procedures for performing sensitivity analysis pursuant to Rule 17Ad–22(e)(6), would need to consider the most volatile relevant periods, where practical, that have been experienced by the markets served by the clearing agency.

Under the existing definition of ''sensitivity analysis,'' the Commission applies the requirements for policies and procedures regarding volatile relevant periods only to covered clearing agencies that are complex risk profile clearing agencies. While this approach applies the requirements related to sensitivity analysis to CCPs that clear security-based swaps, it does not apply the requirements to other clearing agencies that provide CCP services. Under the Commission's proposed amendment to the ''sensitivity analysis'' definition, these requirements for policies and procedures would apply to all covered clearing agencies that are CCPs. The Commission believes that policies and procedures for considering the most volatile relevant periods, where practical, that have been experienced by the markets served by a covered clearing agency promote sound risk management and help mitigate systemic risk. The Commission therefore preliminarily believes that expanding the coverage of this requirement to all CCPs will help mitigate risks to the U.S. financial system. In light of the Commission's proposal to expand the coverage of the ''covered clearing agency'' definition to all CCPs, the Commission preliminarily believes it is important to also require that any currently registered CCP or CCP that may register with the Commission in the future be subject to the same requirement to help mitigate risks to the U.S. financial system. Based on its supervisory experience, the Commission

[100] *See* CCA Standards adopting release, *supra* note 7, at 45.

[101] *See id.* at 44–46.

[102] *See* Exchange Act Release No. 34–69284 (Apr. 3, 2013), 78 FR 21046 (Apr. 9, 2013).

[103] *See id.* at 21047.

[104] *See supra* note 50.

[105] *See supra* note 6.

[106] *See supra* notes 83–88.

preliminarily believes that all active CCPs currently registered with the Commission have policies and procedures for sensitivity analysis though they may vary in their application.

In addition, in order to improve consistency within the definition of sensitivity analysis, the Commission is proposing to separate the two elements that appear in current paragraph (i) into two separate paragraphs and renumber the existing paragraphs accordingly. Thus, ''sensitivity analysis'' 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, 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. This proposed modification would not alter the meaning or application of the definition of ''sensitivity analysis,'' but is designed to improve clarity regarding the number of discrete elements contained in the definition.

E. Request for Comments

The Commission requests comment on all aspects of the proposed amendments to the definitions of ''covered clearing agency,'' ''central securities depository,'' and ''sensitivity analysis'' and the proposed definition of ''securities settlement system,'' including whether the definitions are sufficiently clear and, if not, how they should be changed. In addition, the Commission requests comment on the following specific issues. In all cases, responses should be supported by detailed explanation and analysis and, where possible, empirical evidence.

- In describing the functions or services of a covered clearing agency as those of a CCP, CSD, or SSS, has the Commission's proposal appropriately classified the functions/services of a covered clearing agency? Are there other clearing agency functions or services that the Commission should consider including in the definition of ''covered clearing agency?'' If so, explain why these functions or services should be included and how these functions relate to the policy goals and requirements in Rule 17Ad–22(e). In addition, please explain whether any of the clearing agency functions included in the proposed definition of ''covered clearing agency'' should be excluded and why such an exclusion is appropriate.
- Will the proposed approach to expanding the definition of ''covered clearing agency'' result in duplicative costs for CCPs, CSDs, and SSSs? If so, what are these costs?
- Should any of the requirements under Rule 17Ad–22(e) be altered as they relate to the new entities under the proposed expansion of the ''covered clearing agency'' definition? Please explain.
- In referencing a securities depository as described in Section 3(a)(23)(A) of the Exchange Act, does the proposed definition of ''central securities depository'' sufficiently describe the functions of a CSD? Why or why not? What other functions, if any, should be included in the definition of ''central securities depository?''
- The definition of ''central securities depository'' would continue to appear in Rule 17Ad–22(d)(14).[107] However, as a result of the proposed amendment to the ''covered clearing agency'' definition, a registered clearing agency that performs CSD services would be a covered clearing agency subject to Rule 17Ad–22(e) and would not be subject to the requirements in Rule 17Ad–22(d). Accordingly, should the Commission modify Rule 17Ad–22(d)(14) in light of the proposed amendments? If so, how should the Commission apply Rule 17Ad–22(d)(14) to a registered clearing agency that is not a covered clearing agency?
- Do commenters agree with the proposed definition of ''securities settlement system?'' Should there be another definition? If so, why? Does the definition sufficiently describe the functions of an SSS? Is it sufficiently clear what ''according to a set of predetermined multilateral rules'' means? Please provide examples of SSS activities.
- In light of the proposed amendment to the definition of ''sensitivity analysis,'' would a covered clearing agency have to make changes to its policies and procedures for conducting sensitivity analysis to comply with the new definition? If so, explain the current policies and procedures of covered clearing agencies relevant to conducting sensitivity analysis and how they would need to be changed. The Commission also requests information regarding the anticipated costs of any such changes to policies and procedures. The Commission also requests information regarding the potential benefits.

III. Economic Analysis

The Commission is sensitive to the economic consequences and effects of the proposed 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, competition, and capital formation.[108] 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.[109] 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.[110]

The proposed amendments to three definitions in Rule 17Ad–22(a) would generally expand the scope of registered clearing agencies subject to Rule 17Ad–22(e). The Commission is proposing to amend 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, CSD, or SSS. The Commission is also proposing a

[107] Rule 17Ad–22(d)(14) requires a registered clearing agency other than a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to institute risk controls, including collateral requirements and limits to cover the clearing agency's credit exposure to each participant family exposure fully, that ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle when the clearing agency provides CSD services and extends intraday credit to participants. *See* 17 CFR 240.17Ad–22(d)(14).

[108] *See* 15 U.S.C. 78c(f).

[109] *See supra* Part I.A.1.

[110] *See* 15 U.S.C. 78w(a)(2).

conforming amendment to the definition of ''central securities depository services'' in Rule 17Ad–22(a)(3), and the Commission is proposing to amend the definition of ''sensitivity analysis'' in Rule 17Ad–22(a)(17). As discussed in more detail below, the Commission preliminarily believes the proposed amendments to Rule 17Ad–22(a) would cause one additional registered clearing agency to fall within the definition of ''covered clearing agency'' and become subject to requirements of Rule 17Ad–22(e).

A. Economic Background

The Commission believes that the proposed amendments would support improvements in risk management at registered clearing agencies not currently subject to Rule 17Ad–22(e) as adopted with respect to systemic risk, as well as with respect to legal, credit, liquidity, general business, custody, investment, and operational risk.

As noted in the CCA Standards adopting release, registered clearing agencies have become an essential part of the infrastructure of the U.S. securities markets.[111] 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. 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.[112] As a result, proper management 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. The mandate in Title VII of the Dodd-Frank Act for central clearing of security-based swaps, wherever possible and appropriate, further reinforces this need.[113] When a clearing agency provides CCP services, central clearing replaces bilateral counterparty exposures with exposures against the clearing agency. Consequently, a move from voluntary clearing to mandatory clearing of security-based swaps, holding the volume of security-based swap transactions constant, would increase 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 Standards adopting release, clearing agencies have incentives to implement a risk management framework that can effectively manage the risks posed by central clearing.[114] First, the ongoing viability of a clearing agency depends on its reputation and the confidence that market participants have in its services. Clearing agencies therefore have an incentive to reduce the likelihood that a member default or operational outage would disrupt settlement of a particular transaction or set of transactions. Second, some clearing agencies operate as member-owned utilities and mutualize default risk across their members, and thus non-defaulting participants are subject to losses that occur above the defaulter's margin and clearing fund. Clearing agencies that operate under such models thus have an economic interest in sound risk management to reduce the expected level of losses that must be mutualized. Other clearing agencies are publicly traded and therefore could have different incentives because non-member-owners have a lower economic stake in the clearing agency than member-owners under a mutualized structure.

Such an ownership structure could increase the incentive for owners, particularly those that are non-members, to take risks, though these incentives may be tempered by rules of the clearing agency that are consistent with Section 17A(b)(3)(C) of the Exchange Act, which requires that the clearing agency's rules assure fair representation of its shareholders and participants in the selection of the clearing agency's directors and administration of its affairs.[115]

Nevertheless, incentives for sound risk management may be tempered by pressures to reduce costs and maximize profits that are distinct from goals set forth in governing statutes.[116] This tension may result in a clearing agency making decisions that result in tradeoffs between the costs and benefits of risk management that may not fully reflect the costs and benefits that accrue to other financial market participants as a result of its decisions. For example, because the current market to provide central clearing is characterized by high barriers to entry and limited competition,[117] the market power exercised by clearing agencies in the markets they serve may reduce incentives to invest in risk management systems.[118] Further, even if clearing agencies do internalize costs that they impose on their clearing members, they may fail to internalize the consequences of their risk management decisions on other entities within the financial system that are connected to them through relationships with their clearing members.[119] Such a failure represents a financial network externality imposed by clearing agencies on the broader financial system and suggests that

[111] *See* CCA Standards adopting release, *supra* note 7, at 257.

[112] *See generally* Dietrich Domanski, Leonardo Gambacorta, and Cristina Picillo, Central Clearing: Trends and Current Issues, BIS Quarterly Review (Dec. 2015), *available at 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, at 9 (Fed. Reserve Bank N.Y. Staff Reps., Mar. 2010), *available at 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.''); Pirrong, The Inefficiency of Clearing Mandates, Policy Analysis, No. 655, at 11–14, 16–17, 24–26 (2010), *available at http://www.cato.org/pubs/pas/PA665.pdf*, at 11–14, 16–17, 24–26 (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 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, Jan. 2015), *available at http://papers.ssrn.com/sol3/Delivery.cfm/wp1521.pdf* (assessing the potential channels for contagion arising from CCP interconnectedness); Manmohan Singh, Making OTC Derivatives Safe—A Fresh Look, at 5–11 (IMF Working Paper, Mar. 2011), *available at 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).

[113] *See supra* Part I.A.2.

[114] *See* CCA Standards adopting release, *supra* note 7, at 259–260.

[115] *See* 15 U.S.C. 78q–1(b)(3)(C).

[116] *See supra* Parts I.A.1 and 2 (describing the requirements under the Exchange Act and the Dodd-Frank Act).

[117] *See* CCA Standards proposing release, *supra* note 31, at 29576.

[118] *See infra* Part III.C.1.c (discussing the effect on competition).

[119] *See* Daron Acemoglu, Asuman Ozdaglar & Alireza Tahbaz-Salehi, Systemic Risk and Stability in Financial Networks (NBER Working Paper No. 18727, Jan. 2013), *available at http://www.nber.org/papers/w18727*.

financial stability, as a public good, may be under-produced in equilibrium.

B. Baseline

In order to perform its analysis of the likely economic effects of the proposed amendments to Rule 17Ad–22(a), the Commission is using an economic baseline that considers the current market for clearance and settlement services as it exists at the time of this proposal. As discussed above,[120] the Commission preliminarily believes that the proposed amendment to the definition of ''covered clearing agency'' will likely result in one additional registered clearing agency, ICC, becoming subject to the requirements in Rule 17Ad–22(e). Further, as discussed below, the Commission preliminarily believes that the proposed amendments potentially affect ICEEU even though the amendment to the definition of ''covered clearing agency'' will not change ICEEU's current status as a covered clearing agency.[121] The Commission's baseline therefore includes the two entities in the market for clearance and settlement services—ICC and ICEEU—that the Commission believes would be affected by the proposed amendments. In addition to current market practices at these entities, the baseline includes rules adopted by the Commission, including rules adopted in the CCA Standards adopting release, as well as rules adopted by other regulators, including those in other jurisdictions to the extent that these rules affect the cost structure, business and market practices of the above-mentioned entities. The following section discusses the elements of the baseline that are relevant for the economic analysis of the proposed amendments.

Pursuant to the adoption of amendments to Rule 17Ad–22,[122] five registered clearing agencies—DTC, FICC, ICEEU, NSCC and OCC—currently meet the definition of ''covered clearing agency''. Table 1 below provides basic membership statistics for the two clearing agencies—ICC and ICEEU—that the Commission preliminarily believes would be affected by the proposed amendments to Rule 17Ad–22(a).

TABLE 1—MEMBERSHIP STATISTICS FOR ICE CLEAR CREDIT & ICE CLEAR EUROPE [123]

	Number
Clear Credit Members	30
ICE Clear Europe Members	80
—Clear Europe Members that clear CDS	21

To further assess the economic effects of the proposed amendments to Rule 17Ad–22(a), including possible effects on efficiency, competition, and capital formation, the Commission is also considering as part of the baseline (i) the current regulatory framework for registered clearing agencies, and (ii) the current practices of the entities that would be affected by the proposed amendments to Rule 17Ad–22(a). Each is discussed further below.

1. Regulatory Framework for Registered Clearing Agencies

As previously discussed, the current regulatory framework for registered clearing agencies begins with Section 17A of the Exchange Act, which directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and provides for the registration of clearing agencies.[124] Section 19 of the Exchange Act sets forth the general registration requirements for clearing agencies as SROs, their responsibility as SROs to file proposed rule changes with the Commission for review and approval, and, in general, the provisions relating to Commission oversight of SROs.[125] Titles VII and VIII of the Dodd-Frank Act have expanded the Commission's role with respect to the regulation of central clearing. Specifically, Title VII amended Section 17A of the Exchange Act by adding new paragraphs (g) through (j), which provide the Commission with authority to adopt rules governing security-based swap clearing agencies.[126] The Clearing Supervision Act, adopted in Title VIII, provides for enhanced regulation of SIFMUs and, more generally, for enhanced coordination among the Commission, CFTC, and FRB by facilitating examinations and information sharing.[127] As noted above, on July 18, 2012, the FSOC designated as SIFMUs five registered clearing agencies.[128]

In 2012, the Commission adopted Rule 17Ad–22 under the Exchange Act to strengthen the substantive regulation of registered clearing agencies, promote the safe and reliable operation of registered clearing agencies, and improve efficiency, transparency, and access to registered clearing agencies.[129] In its economic analysis of the Clearing Agency Standards release, the Commission noted that the economic characteristics of clearing agencies, including economies of scale, barriers to entry, and the particulars of their legal mandates, may limit competition and confer market power on such clearing agencies, which may lead to lower levels of service, higher prices, or under-investment in risk management systems.[130] To address these potential market failures, Rule 17Ad–22 was adopted to strengthen the substantive regulation of clearing agencies, promote the safe and reliable operation of clearing agencies, improve efficiency, transparency, and access to clearing agencies, and promote consistency with international standards.[131]

Today, the Commission adopted amendments to Rule 17Ad–22 and new Rule 17Ab2–2. Rule 17Ad–22(a)(5) provides the definition of ''covered clearing agency,'' and Rule 17Ad–22(e) establishes standards for the operation and governance of registered clearing agencies that meet the definition of a covered clearing agency. Rule 17Ab2–2 provides a process by which the Commission may determine or rescind past determinations about, whether a covered clearing agency is systemically important in multiple jurisdictions, and whether any of the activities of a clearing agency providing CCP services, including clearing agencies registered with the Commission for the purpose of clearing security-based swaps, have a more complex risk profile.[132]

Finally, efforts by the CFTC to adopt rules that are consistent with the PFMI are also relevant to the economic analysis of the proposed amendments to Rule 17Ad–22(a).[133] The CFTC has issued rules for derivatives clearing organizations and systemically important derivatives clearing

[120] *See supra* Part II.A.4.

[121] *See infra* Part III.C.1.c.

[122] *See* CCA Standards adopting release, *supra* note 7, at 458–459.

[123] Membership statistics are taken from the Web sites of each of the listed clearing agencies as of March 2016. ICE, ICE Clear Credit Participants, *available at https://www.theice.com/clear-credit/participants*; ICE, ICE Clear Europe Membership, *available at https://www.theice.com/clear-europe/membership*.

[124] *See supra* Part I.A.1.

[125] *See supra* notes 16–18 and accompanying text.

[126] *See supra* note 22 and accompanying text.

[127] *See supra* notes 23–30 and accompanying text.

[128] *See supra* note 50.

[129] *See supra* note 31 and accompanying text.

[130] *See* Clearing Agency Standards adopting release, *supra* note 31, at 66263.

[131] *See id.* at 66225–26, 66263–64.

[132] *See* CCA Standards adopting release, *supra* note 7, at 456–477.

[133] *See id.* at 272.

organizations (''SIDCOs'') which it indicated are intended to be consistent with the PFMI.[134] ICC, the registered clearing agency that the Commission anticipates will fall into the revised covered clearing agency definition, is a clearing agency registered with the Commission that is also supervised by the CFTC as a SIDCO under subpart C of Part 39 of the Commodity Exchange Act.

2. Current Practices

Current industry practices are a critical element of the economic baseline for registered clearing agencies. Registered clearing agencies must operate in compliance with Rule 17Ad–22, though they may vary in the particular ways they achieve such compliance. Some variation in practices across registered clearing agencies derives from the products they clear and the markets they serve.

As discussed above,[135] the Commission preliminarily believes that the proposed revision to Rule 17Ad–22(a) will likely result in one additional registered clearing agency, ICE Clear Credit, falling within the definition of covered clearing agency. Further, the Commission preliminarily believes that the proposed amendments may affect ICE Clear Europe (ICEEU) even though these amendments will not change ICEEU's current status as a covered clearing agency.[136] An overview of the current practices of these entities is set forth below and includes discussion of clearing agency policies and procedures regarding general organization and risk management, including the management of legal, credit, liquidity, business, custody, investment, and operational risk. This discussion is intended solely for the purpose of analyzing the economic effects of the proposed amendments and is based on the Commission's general understanding of current practices as of the date of this proposal, informed by information published by registered clearing agencies, as well as the Commission's experience supervising registered clearing agencies.

a. General Organization

i. Legal Risk

Legal risk is the risk that a registered clearing agency's rules, policies, or procedures may not be enforceable and concerns, among other things, its contracts, the rights of members, netting arrangements, discharge of obligations, and settlement finality. Cross-border activities of a registered clearing agency may also present elements of legal risk.

Rule 17Ad–22(d)(1) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.[137] Each registered clearing agency makes a large portion of these policies and procedures available to members and participants. In addition, each also publishes their rule books and other key procedures publicly in order to promote the transparency of their legal framework.[138]

ii. Governance

Rule 17Ad–22(d)(8) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.[139] Important elements of a registered clearing agency's governance arrangements include its ownership structure; its charter, bylaws, and charters for committees of its board and management committees; its rules, policies, and procedures; the composition and role of its board, including the structure and role of board committees; reporting lines between management and the board; and the processes that provide for management accountability with respect to the registered clearing agency's performance.

Each registered clearing agency has a board that governs its operations and supervises senior management. Each registered clearing agency also has an independent audit committee of the board and has established a board committee or committee of members tasked with overseeing the clearing agency's risk management functions.

iii. Amended Framework for the Comprehensive Management of Risks

Rules 17Ad–22(b) and (d) require registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure and mitigate credit exposures, identify operational risks, evaluate risks arising in connection with cross-border and domestic links for the purpose of clearing or settling trades, achieve DVP settlement, and implement risk controls to cover the clearing agency's credit exposures to participants.[140] Rule 17Ad–22(d)(4) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish business continuity plans setting forth procedures for the recovery of operations in the event of a disruption.[141] Rule 17Ad–22(d)(11) further requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.[142]

In addition to meeting these requirements, the Commission understands that registered clearing agencies also specify actions to be taken when their resources are insufficient to cover losses faced by the registered clearing agency.[143] These actions may include assessment rights on clearing members, forced allocation, and contract termination.

b. Financial Risk Management

Registered clearing agencies that provide CCP services have a variety of options available to mitigate the financial risks to which they are exposed. While the manner in which a CCP chooses to mitigate these financial risks depends on the precise nature of the CCP's obligations, a common set of procedures have been implemented by

[134] *See* Derivatives Clearing Organizations and International Standards, Final Rule, 78 FR 72477 (Dec. 2, 2013).

[135] *See* Part II.A.4.

[136] *See infra* Part III.C.1.c.

[137] *See* 17 CFR 240.17Ad–22(d)(1); Clearing Agency Standards adopting release, *supra* note 31, at 66245–46.

[138] The rule book of each registered clearing agency, as well as select policies and procedures, are publicly available on each registered clearing agency's Web site.

[139] *See* 17 CFR 240.17Ad–22(d)(8); *see also* Clearing Agency Standards adopting release, *supra* note 31, at 66251–52.

[140] *See* 17 CFR 240.17Ad–22(b) and (d); *see also* Clearing Agency Standards adopting release, *supra* note 31.

[141] *See* 17 CFR 240.17Ad–22(d)(4); *see also* Clearing Agency Standards adopting release, *supra* note 31, at 66248–49.

[142] *See* 17 CFR 240.17Ad–22(d)(11).

[143] *See* David Elliot, Central Counterparty Loss-Allocation Rules, at tbl. 1A (Bank of England Financial Stability Paper No. 20, Apr. 2013), *available at http://www.bankofengland.co.uk/research/Documents/fspapers/fs_paper20.pdf* (noting the loss-allocation rules applied at the end of a clearing agency waterfall).

many CCPs to manage credit and liquidity risks. Broadly, these procedures enable CCPs to manage their risks by reducing the likelihood of member defaults, limiting potential losses and liquidity pressure in the event of a member default, implementing mechanisms that allocate losses across members, and providing adequate resources to cover losses and meet payment obligations as required.

Registered clearing agencies that provide CCP services must be able to effectively measure their credit exposures in order to properly manage those exposures. A CCP faces the risk that its exposure to a member can change as a result of a change in prices, positions, or both. CCPs can ascertain current credit exposures to each member by, in some cases, marking each member's outstanding contracts to current market prices and, to the extent permitted by their rules and supported by law, by netting any gains against any losses. Rule 17Ad–22 includes certain requirements related to financial risk management by CCPs, including requirements to measure credit exposures to members and to use margin requirements to limit these exposures. These requirements are general in nature and provide registered clearing agencies flexibility to measure credit risk and set margin. Within the bounds of Rule 17Ad–22, CCPs may employ models and choose parameters that they conclude are appropriate to the markets they serve.

The current practices of registered clearing agencies that provide CCP services generally include the following procedures: (1) Measuring credit exposures at least once a day; (2) setting margin coverage at a 99% confidence level over some set period; (3) using risk-based models; (4) establishing a fund that mutualizes losses of defaults by one or more participants that exceed margin coverage; (5) maintaining sufficient financial resources to withstand the default of at least the largest participant family,[144] and (6), in the case of security-based swap transactions, maintaining enough financial resources to be able to withstand the default of their two largest participant families.[145]

i. Credit Risk

Rule 17Ad–22(b)(1) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure their credit exposures at least once per day.[146] Several CCPs have policies and procedures designed to require measuring credit exposures multiple times per day.

Rule 17Ad–22(b)(3) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions.[147] It further requires CCPs for security-based swaps to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources sufficient to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, in its capacity as a CCP for security-based swaps.[148] Accordingly, the Commission notes that Rule 17Ad–22(b)(3) imposes a ''cover two'' requirement on CCPs for security-based swaps in order to protect such CCPs from the extreme jump-to-default risk and nonlinear payoffs associated with the nature of the financial products they clear and the participants in the markets they serve. Meanwhile, CCPs that clear products other than security-based swaps are subject to a ''cover one'' requirement.[149] Rule 17Ad–22(b)(3) also states that such policies and procedures may provide that additional financial resources be maintained by the CCP in combined or separately maintained funds.[150]

Under existing rules, CCPs collect contributions from their members for the purpose of establishing guaranty or clearing funds to mutualize losses under extreme but plausible market conditions. Currently, the guaranty funds or clearing funds consist of liquid assets and their sizes vary depending on a number of factors, including the products the CCP clears and the characteristics of CCP members. In particular, the guaranty funds for CCPs that clear security-based swaps are relatively larger, as measured by the size of the fund as a percentage of the total and largest exposures, than the guaranty or clearing funds maintained by CCPs for other financial instruments. CCPs generally take the liquidity of collateral into account when determining member obligations. Applying haircuts to assets posted as margin, among other things, mitigates the liquidity risk associated with selling margin assets in the event of a participant default.

ICC recently modified its policies and procedures related to stress testing frameworks indicating that the modifications were designed to ensure that it meets regulatory requirements under Rule 17Ad–22(b)(3).[151]

ii. Collateral and Margin

Rule 17Ad–22(b)(2) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit their exposures to participants.[152] This margin can also be used to reduce a CCP's losses in the event of a participant default.

Registered clearing agencies that provide CCP services take positions as substituted counterparties once their

[144] *See, e.g.,* IMF, Publication of Financial Sector Assessment Program Documentation—Detailed Assessment of Observance of the National Securities Clearing Corporation's Observance of the CPSS–IOSCO Recommendations for Central Counterparties, at 10 (May 2010), *available at http://www.imf.org/external/pubs/ft/scr/2010/cr10129.pdf* (assessing NSCC's observance of Recommendation 5 from the RCCP that a CCP should maintain sufficient financial resources to withstand, at a minimum, the default of a participant to which it has the largest exposure in extreme but plausible market conditions; also noting that NSCC began evaluating itself against this standard in 2009 and has backtesting results to support that it maintained sufficient liquidity to cover the failure of the largest affiliated family 99.98% of the time during the period from January through April 2009); IMF, Publication of Financial Sector Assessment Program Documentation—Detailed Assessment of Observance of the Fixed Income Clearing Corporation—Government Securities Division's Observance of the CPSS–IOSCO Recommendations for Central Counterparties, at 9–10 (2010), *available at http://www.imf.org/external/pubs/ft/scr/2010/cr10130.pdf* (finding that FICC's Government Securities Division observed the requirement to maintain enough financial resources to meet the default of its largest participant in extreme but plausible market conditions).

[145] *See, e.g.,* CFTC–SEC Staff Roundtable on Clearing of Credit Default Swaps, at 123 (Oct. 2010), *available at http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission7_102210-transcrip.pdf* (Stan Ivanov of ICE stating, ''[A]t ICE we look at two simultaneous defaults of the two biggest losers upon extreme conditions. . . .''); *see also* ICE, CDS Client Clearing Overview, at 8 (Aug. 2013), *available at https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Client_Clearing_Overview.pdf* (noting that the guaranty fund covers the simultaneous default of the two largest clearing members); CME Rulebook, Ch. 8H, Rule 8H07, *available at http://www.cmegroup.com/rulebook/CME/I/8H/8H.pdf.*

[146] *See* 17 CFR 240.17Ad–22(b)(1).

[147] *See* 17 CFR 240.17Ad–22(b)(2).

[148] *See id.*

[149] *See* CCA Standards adopting release, *supra* note 7, at 105–112 (discussing the requirements for ''cover one'' and ''cover two'').

[150] *See id.*

[151] *See* Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Amendment 1 and Order Approving Proposed Rule Change, as modified by Amendment 1 Thereto, to Update and Formalize the ICC Stress Testing Framework, Exchange Act Release No. 34–77982 (June. 2, 2016).

[152] *See* 17 CFR 240.17Ad–22(b)(2).

trade guarantee goes into effect. Therefore, if a counterparty whose obligations the registered clearing agency has guaranteed defaults, the covered clearing agency may face market risk, which can take one of two forms. First, a covered clearing agency is subject to the risk of movement in the market prices of the defaulting member's open positions. Where a seller defaults and fails to deliver a security, the covered clearing agency may need to step into the market to buy the security in order to complete settlement and deliver the security to the buyer. Similarly, where a buyer defaults, the covered clearing agency may need to meet payment obligations to the seller. Thus, in the interval between when a member defaults and when the covered clearing agency must meet its obligations as a substituted counterparty in order to complete settlement, market price movements expose the covered clearing agency to market risk. Second, the covered clearing agency may need to liquidate non-cash margin collateral posted by the defaulting member. The covered clearing agency is therefore exposed to the risk that erosion in market prices of the collateral posted by the defaulting member could result in the covered clearing agency having insufficient financial resources to cover the losses in the defaulting member's open positions.

To manage their exposure to market risk resulting from fulfilling a defaulting member's obligations, registered clearing agencies compute margin requirements using inputs such as portfolio size, volatility, and sensitivity to various risk factors that are likely to influence security prices. Moreover, since the size of price movements is, in part, a function of time, registered clearing agencies may limit their exposure to market risk by marking participant positions to market daily and, in some cases, more frequently. CCPs also use similar factors to determine haircuts applied to assets posted by members in satisfaction of margin requirements. To manage market risk associated with collateral liquidation, CCPs consider the current prices of assets posted as collateral and price volatility, asset liquidity, and the correlation of collateral assets and a member's portfolio of open positions. Further, because CCPs need to value their margin assets in times of financial stress, their rulebooks may include features such as market-maker domination charges that increase clearing fund obligations regarding open positions of members in securities in which the member serves as a dominant market maker. The reasoning behind this charge is that, should a member default, liquidity in products in which the member makes markets may fall, leaving these positions more difficult to liquidate for non-defaulting participants.

Rule 17Ab–22(b)(2) also requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for risk-based models and parameters to set margin requirements.[153] The generally recognized standard for such models and parameters is, under normal market conditions, price movements that produce changes in exposures that are expected to breach margin requirements or other risk controls only 1% of the time (*i.e.,* at a 99% confidence interval) over a designated time horizon.[154] Currently, CCPs use margin models to ensure coverage at a single-tailed 99% confidence interval. Losses beyond this level are typically covered by the CCP's guaranty fund. This standard comports with existing international standards for bank capital requirements, which require banks to measure market risks at a 99% confidence interval when determining regulatory capital requirements.[155]

Rule 17Ad–22(b)(2) also requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to review such margin requirements and the related risk-based models and parameters at least monthly.[156] CCPs are accordingly required to establish a model validation process that evaluates the adequacy of margin models, parameters, and assumptions. Additionally, CCPs are required to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the CCPs' margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated.[157]

To meet resource requirements under Rule 17Ad–22(b)(3),[158] ICC recently adjusted its risk calculations and models to account for accumulation of wrong-way risk at the portfolio level.[159]

iii. Liquidity Risk

In addition to credit risk and the aforementioned market risk, registered clearing agencies also face liquidity or funding risk. Currently, covered clearing agencies have varying degrees of formality with respect to their standards and practices relating to liquidity shortfalls. To complete the settlement process, registered clearing agencies that employ netting rely on incoming payments from participants in net debit positions in order to make payments to participants in net credit positions. If a participant does not have sufficient funds or securities in the form required to fulfill a payment obligation immediately when due (even though it may be able to pay at some future time), or if a settlement bank is unable to make an incoming payment on behalf of a participant, a registered clearing agency may face a funding shortfall. Such funding shortfalls may occur due to a lack of financial resources necessary to meet delivery or payment obligations, however even registered clearing agencies that do hold sufficient financial resources to meet their obligations may not carry those in the

[153] *See id.*

[154] *See* 17 CFR 240.17Ad–22(a)(4).

[155] *See* BCBS, International Convergence of Capital Measurement and Capital Standards: A Amended Framework (June 2004), *available at http://www.bis.org/publ/bcbs107.pdf*; *see also* Darryll Hendricks & Beverly Hirtle, New Capital Rule Signals Supervisory Shift (Secondary Mortgage Mkts, Sept. 1998), *available at http://www.freddiemac.com/finance/smm/july98/pdfs/hen_hirt.pdf.*

Prior to this standard, banks measured value-at-risk using a range of confidence intervals from 90–99%. *See* BCBS, An Internal Model-Based Approach to Market Risk Capital Requirements, at 12 (Apr. 1995), *available at http://www.bis.org/publ/bcbs17.pdf.* When determining the minimum quantitative standards for calculating risk measurements, the BCBS noted then the importance of specifying ''a common and relatively conservative confidence level,'' choosing the 99% confidence interval over other less conservative measures. *See id.*

Since its adoption in 1998, the standard has become a generally recognized practice of banks to quantify credit risk as the worst expected loss that a portfolio might incur over an appropriate time horizon at a 99% confidence interval. *See* Kenji Nishiguchi, Hiroshi Kawai & Takanori Sazaki, Capital Allocation and Bank Management Based on the Quantification of Credit Risk, at 83 (FRBNY Econ. Policy Rev., Oct. 1998), *available at http://www.newyorkfed.org/research/epr/98v04n3/9810nish.pdf*; Jeff Aziz & Narat Charupat, Calculating Credit Exposure and Credit Loss: A Case Study, at 34 (Sept. 1998), *available at http://www.bis.org/bcbs/ca/alrequse98.pdf.*

[156] *See* 17 CFR 240.17Ad–22(b)(2).

[157] *See* 17 CFR 240.17Ad–22(b)(4).

[158] *See* Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Exchange Act Release No. 34–75119 (June 8, 2015) at note 7.

[159] *See* Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Amendments No. 1 and 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendments No. 1 and 2, to Revise the ICC Risk Management Framework, Exchange Act Release No. 34–75887 (Sept. 10, 2015).

form required for delivery or payments to participants.

A registered clearing agency that provides CCP services may hold additional financial resources to cover potential funding shortfalls in the form of collateral. As noted above, CCPs may take the liquidity of collateral into account when determining member obligations. Applying haircuts to illiquid assets posted as margin mitigates the liquidity risk associated with selling margin assets in the event of participant default. Some registered CCPs also arrange for liquidity provision from other financial institutions using lines of credit. Additionally, some registered clearing agencies enter into prearranged funding agreements with their members pursuant to their rules. For example, members of one registered clearing agency are obligated to enter into repurchase agreements against securities that would have been delivered to a defaulting member.

ICC has disclosed a liquidity management program that includes stress testing of liquidity requirements to meet settlement obligations over a range of different horizons under extreme but plausible market conditions.[160] ICC also reports that its liquidity resources include cash, U.S. Treasury securities, and committed repurchase agreements.[161]

c. Settlement

Rule 17Ad–22(d)(5) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks and require funds transfers to the clearing agency to be final when effected.[162] Rule 17Ad–22(d)(12) further requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that final settlement occurs no later than the end of the settlement day.[163] Accordingly, for example, certain registered clearing agencies have policies and procedures that provide for final settlement of securities transfers no later than the end of the day of the transaction. Rule 17Ad–22(d)(15) also requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to state to its participants the clearing agency's obligations with respect to physical deliveries and identify and manage the risks from these obligations.[164]

d. CSDs and Exchange-of-Value Settlement Systems

i. CSDs

Rule 17Ad–22(d)(10) requires a registered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain securities in an immobilized or dematerialized form for transfer by book entry to the greatest extent possible. Currently, some securities, such as mutual fund securities and government securities, are issued primarily or solely on a dematerialized basis. Dematerialized shares do not exist as physical certificates but are held in book entry form in the name of the owner (which, where the master security holder file is not maintained on paper due to the use of technology, is also referred to as electronic custody). Other types of securities may be issued in the form of one or more physical security certificates, which could be held by the CSD to facilitate immobilization. Alternatively, securities may be held by the beneficial owner in record name, in the form of book-entry positions, where the issuer offers the ability for a security holder to hold through the direct registration system. Whether immobilization occurs at the CSD or through direct registration depends on what is provided for by the issuer.

When a trade occurs, the depository's accounting system credits one participant account and debits another participant account. Transactions between counterparties in dematerialized shares are recorded by the registrar responsible for maintaining the paper or electronic register of security holders, such as by a transfer agent, and reflected in customer accounts.

Registered CSDs currently reconcile ownership positions in securities against CSD ownership positions on the security holders list daily, mitigating the risk of unauthorized creation or deletion of shares.

ii. Exchange-of-Value Settlement Systems

Rule 17Ad–22(d)(13) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment,[165] which serves to link obligations by conditioning the final settlement of one upon the final settlement of the other. One registered clearing agency, for example, operates a Model 2 DVP system that provides for gross securities transfers during the day followed by an end-of-day net funds settlement. Under the rules governing the clearing agency's system, the delivering party in a DVP transaction is assured that it will be paid for the securities once they are credited to the receiving party's securities account. DVP eliminates the risk that a buyer would lose the purchase price of a security purchased from a defaulting seller or that a seller would lose the sold security without receiving payment for a security acquired by a defaulting buyer.

For example, one registered clearing agency has rules governing its continuous net settlement (''CNS'') system, under which it becomes the counterparty for settlement purposes at the point its trade guarantee attaches, thereby assuming the obligation of its members that are receiving securities to receive and pay for those securities, and the obligation of members that are delivering securities to make the delivery. Unless the clearing agency has invoked its default rules, it is not obligated to make those deliveries until it receives from members with delivery obligations deliveries of such securities; rather, deliveries that come into CNS ordinarily are promptly redelivered to parties that are entitled to receive them through an allocation algorithm. Members are obligated to take and pay for securities allocated to them in the CNS process. These rules also provide mechanisms to allow receiving members a right to receive high priority in the allocation of deliveries, and also permit a member to buy-in long positions that have not been delivered to it by the close of business on the scheduled settlement date.

e. Default Management

i. Participant-Default Rules and Procedures

Rule 17Ad–22(d)(11) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of its default procedures publicly available and establish default procedures that ensure it can take timely action to contain losses and

[160] *See* ICE Clear Credit Disclosure Framework, note 145 *supra,* at 18.

[161] *See id.*

[162] *See* 17 CFR 240.17Ad–22(d)(5).

[163] *See* 17 CFR 240.17Ad–22(d)(12).

[164] *See* 17 CFR 240.17Ad–22(d)(15).

[165] *See* 17 CFR 240.17Ad–22(d)(13); *see also* Clearing Agency Standards adopting release, *supra* note 31, at 66256.

liquidity pressures and to continue meeting its obligations in the event of a participant default. The rules of registered clearing agencies typically state what constitutes a default, identify whether the board or a committee of the board may make that determination, and describe what steps the clearing agency may take to protect itself and its members. In this regard, registered clearing agencies typically attempt, among other things, to hedge and liquidate a defaulting member's positions. Rules of registered clearing agencies also include information about the allocation of losses across available financial resources. The registered clearing agency the Commission anticipates will fall within the definition of covered clearing agency as a result of the proposed amendments conduct testing of its default procedures at least annually, including participation by clearing members.

ii. Segregation and Portability

No rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to enable the portability of positions of a member's customers and the collateral provided in connection therewith. Additionally, no rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to protect the positions of a member's customers from the default or insolvency of the member.[166]

ICC maintains rules and procedures that facilitate the segregation and portability of positions of a clearing member's customers and the collateral provided to it with respect to those positions.[167] ICC's rules are designed to comply with the CFTC's requirements addressing custody, segregation, and investment of customer margin provided in respect of cleared swaps. ICC thus segregates customer funds pursuant to the ''legally segregated, operationally commingled'' (''LSOC'') model found under Part 22 of the CFTC Regulations.[168] Under the LSOC model if a customer defaults, ICC may apply clearing member funds and defaulting customer funds to cover losses, but may not use collateral provided by non-defaulting customers. Additionally, under ICC rules, each clearing member that carries customer positions must, upon request of a customer, transfer or novate that customers position to one or more other clearing members designated by the customer, subject to the consent of the transferee; satisfaction by the customer of any margin requirements imposed by the transferor on any positions remaining at the transferor; and the completion of all required transfer documentation.[169]

f. General Business and Operational Risk Management

i. General Business Risk

Business risk refers to the risks and potential losses arising from a registered clearing agency's administration and operation as a business enterprise that are neither related to member default nor separately covered by financial resources designated to mitigate credit or liquidity risk. While Rule 17Ad–22 sets forth requirements for registered clearing agencies to identify, monitor, and mitigate or eliminate a broad array of risks through written policies and procedures, no rule under the Exchange Act expressly requires a registered clearing agency through its written policies and procedures to identify, monitor, and manage general business risk or to meet a capital requirement. Registered clearing agencies currently have certain internal controls in place to mitigate business risk. Some clearing agencies, for instance, have policies and procedures that identify an auditor who is responsible for examining accounts, records, and transactions, as well as other duties prescribed in the audit program. Other registered clearing agencies allow members to collectively audit the books of the clearing agency on an annual basis, at their own expense.

ICC maintains financial resources that, pursuant to regulation as a SIDCO by the CFTC,[170] are sufficient to cover twelve months of operating costs.[171] ICC has publicly stated its belief that an orderly wind-down of its business would take between six and twelve months.[172]

ii. Custody and Investment Risks

Registered clearing agencies face default risk from commercial banks that they use to effect money transfers among participants, to hold overnight deposits, and to safeguard collateral. Rule 17Ad–22(d)(3) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to (i) hold assets in a manner that minimizes risk of loss or delay in its access to them; and (ii) invest assets in instruments with minimal credit, market, and liquidity risks.[173] Registered clearing agencies currently seek to minimize the risk of loss or delay in access by holding assets that are highly liquid (*e.g.,* cash, U.S. Treasury securities, or securities issued by a U.S. government agency) and by engaging banks to custody the assets and facilitate settlement. Typically, registered clearing agencies take steps to ensure that assets held in custody are protected from claims from the custodian's creditors using trust accounts or equivalent arrangements. Additionally, designated clearing agencies may have access to credit at a Federal Reserve Bank or other relevant central bank, to the extent such services are not already available as the result of other laws and regulations.[174]

ICC's Treasury Operations Policies and Procedures provide for the use of a Federal Reserve Account, the use of a committed repurchase facility and outside investment managers to invest guarantee fund and margin cash.[175]

iii. Operational Risk

Operational risk refers to a broad category of potential losses arising from deficiencies in internal processes, personnel, and information technology. Registered clearing agencies face operational risk from both internal and external sources, including human error, system failures, security breaches, and natural or man-made disasters. Rule 17Ad–22(d)(4) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and to minimize those risks through the development of appropriate systems, controls and procedures.[176] It also requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to (i) implement systems that are reliable and secure, and have adequate, scalable capacity; and (ii) have business continuity plans that

[166] *See* CCA Standards adopting release, *supra* note 7, at 189–193 (discussing existing rules applicable to registered broker-dealers that address customer security positions and funds in cash securities and listed option markets, thereby promoting segregation and portability at the broker-dealer level).

[167] *See* ICE Clear Credit Disclosure Framework, *supra* note 145, at 26.

[168] *See id.*

[169] *See id.*

[170] *See* 17 CFR 39.39(d).

[171] *See* ICE Clear Credit Disclosure Framework, *supra* note 145, at 27.

[172] *See id.*

[173] *See* 17 CFR 240.17Ad–22(d)(3).

[174] *See* CCA Standards adopting release, *supra* note 7, at 159 (discussing the requirements under Rule 17Ad–22(e)(7)(iii)).

[175] *See* ''Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change to Revise the ICC Treasury Operations Policies and Procedures'' Exchange Act Release No. 34–74456 (Mar. 6, 2015).

[176] *See* 17 CFR 240.17Ad–22(d)(4).

allow for timely recovery of operations and fulfillment of a clearing agency's obligations.[177]

As a result, registered clearing agencies have developed and currently maintain plans to ensure the safeguarding of securities and funds, the integrity of automated data processing systems, and the recovery of securities, funds, or data under a variety of loss or destruction scenarios.[178] These plans may include turning operations over to a secondary site that is located a sufficient distance from the primary location to ensure a distinct geographic risk profile. In addition, registered clearing agencies generally maintain an internal audit department to review the adequacy of their internal controls, procedures, and records with respect to operational risks. Some registered clearing agencies also engage independent accountants to perform an annual study and evaluation of the internal controls relating to their operations.[179]

The Commission adopted Regulation SCI in November 2014, in part, to reduce the occurrence of systems issues, and enhance resiliency when systems problems do occur at certain SROs, such as registered clearing agencies. In particular, Regulation SCI requires that clearance and settlement systems be designed to accomplish end-of-day settlement on the day of a wide-scale disruption. Accordingly, Regulation SCI requires registered clearing agencies to have policies and procedures in place for business continuity as well as disaster recovery plans that include maintaining sufficiently resilient and geographically diverse backup and recovery capabilities that are reasonably designed to achieve two-hour resumption of critical SCI systems following a wide-scale disruption.[180]

g. Access

i. Access and Participation Requirements

Rule 17Ad–22(b)(5) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide the opportunity for a person that does not perform any dealer or security-based swap dealer services to obtain membership on fair and reasonable terms at the clearing agency to clear securities for itself or on behalf of other persons.[181] Rule 17Ad–22(b)(6) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to have membership standards that do not require participants to maintain a portfolio of any minimum size or a minimum transaction volume.[182] Rule 17Ad–22(b)(7) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital equal or greater than $50 million with the ability to obtain membership at the clearing agency, provided such persons are able to comply with reasonable membership standards, with higher net capital requirements permissible subject to Commission approval.[183]

In addition, Rule 17Ad–22(d)(2) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, have procedures in place to monitor that participation requirements are met on an ongoing basis, and have participation requirements that are objective and publicly disclosed, and permit fair and open access.[184] Typically, a registered clearing agency's rulebook requires applicants for membership to provide certain financial and operational information prior to being admitted as a member and on an ongoing basis as a condition of continuing membership. Registered clearing agencies review this information to ensure that the applicant has the operational capability to meet the other demands of interfacing with the clearing agency. In particular, registered clearing agencies typically require that an applicant demonstrate that it has adequate personnel capable of handling transactions with the clearing agency and adequate physical facilities, books and records, and procedures to fulfill its anticipated commitments to, and to meet the operational requirements of, the clearing agency and other members with necessary promptness and accuracy. As a result, an applicant needs to demonstrate that it has adequate personnel capable of handling transactions with the clearing agency and adequate physical facilities, books and records, and procedures to conform to conditions or requirements in these areas that the clearing agency reasonably may deem necessary for its protection. Registered clearing agencies have published these requirements on their Web sites.

Registered clearing agencies use an ongoing monitoring process to help them understand relevant changes in the financial condition of their members and to mitigate credit risk exposure of the clearing agency to its members. The risk management staff analyzes financial statements filed with regulators, as well as information obtained from other SROs and gathered from various financial publications, so that the clearing agency may evaluate, for instance, whether members maintain sufficient financial resources and robust operational capacity to meet their obligations as participants in the clearing agency pursuant to existing Rule 17Ad–22(d)(2)(i).

Table 1 contains membership statistics for the registered clearing agencies likely to be affected by the proposed rule amendment.[185] Current membership generally reflects features of cleared markets. The decision to become a clearing member depends on the products being cleared, the structure of these asset markets as well as the current state of regulation for cleared markets.

ii. Tiered Participation Arrangements

Tiered participation arrangements occur when clearing members (direct participants) provide access to clearing services to third parties (indirect participants). No rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to identify, monitor, and manage material risks arising from tiered participation arrangements. The Commission understands, however, that certain registered clearing agencies have policies and procedures currently in place in order to identify, monitor, or manage such arrangements. Specifically, such clearing agencies rely on information gathered from, and distributed by, direct participants in order to manage these tiered participation arrangements. For example, under some covered clearing

[177] *See id.*

[178] Many of these practices had been previously developed pursuant to other Commission requirements. *See* CCA Standards adopting release, *supra* note 7, at 19–21, 181–182, 294–295 (discussing related requirements under Regulation SCI).

[179] *See, e.g.,* NSCC, Assessment of Compliance with the CPSS/IOSCO Recommendations for Central Counterparties (Nov. 2011), *available at http://www.dtcc.com/legal/policy-and-compliance.aspx.*

[180] *See* 17 CFR 242.1001(a)(2).

[181] *See* 17 CFR 240.17Ad–22(b)(5).

[182] *See* 17 CFR 240.17Ad–22(b)(6).

[183] *See* 17 CFR 240.17Ad–22(b)(7).

[184] *See* 17 CFR 240.17Ad–22(d)(2).

[185] *See supra* Part III.B.

agencies' rules, direct participants generally have the responsibility to indicate to the clearing agency whether a transaction submitted for clearing represents a proprietary or customer position. Such rules further require direct participants to calculate, and notify the clearing agency of the value of, each customer's collateral. Direct participants also communicate with indirect participants regarding the clearing agency's margin and other requirements.

ICC does not currently have tiered participation arrangements.[186]

iii. Links

Rule 17Ad–22(d)(7) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear or settle trades, and ensure that the risks are managed prudently on an ongoing basis.[187]

Each registered clearing agency is linked to other clearing organizations, trading platforms, and service providers. For instance, a link between U.S. and Canadian clearing agencies allows U.S. members to clear and settle valued securities transactions with participants of a Canadian securities depository. The link is designed to facilitate cross-border transactions by allowing members to use a single depository interface for U.S. and Canadian dollar transactions and eliminate the need for split inventories.[188] Registered clearing agencies that provide CCP services currently establish links to allow members to realize collateral and other operational efficiencies. ICC does not offer inter-operability links with other CCPs.

h. Efficiency

i. Efficiency and Effectiveness

Rule 17Ad–22(d)(6) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the clearing agency to be cost-effective in meeting the requirements of participants while maintaining safe and secure operations.[189] Registered clearing agencies have procedures to control costs and to regularly review pricing levels against operating costs. These clearing agencies may use a formal budgeting process to control expenditures, and may review pricing levels against their costs of operation during the annual budget process. Registered clearing agencies also analyze workflows in order to make recommendations to improve their operating efficiency.

ii. Communication Procedures and Standards

Although no rule under the Exchange Act expressly requires a registered clearing agency through its written policies and procedures to use or accommodate relevant internationally accepted communication procedures and standards, the Commission believes that registered clearing agencies already use these standards. Registered clearing agencies typically rely on electronic communication with market participants, including members. For example, some registered clearing agencies have rules in place stating that clearing members must retrieve instructions, notices, reports, data, and other items and information from the clearing agency through electronic data retrieval systems. Some registered clearing agencies have the ability to rely on signatures transmitted, recorded, or stored through electronic, optical, or similar means. Other clearing agencies have policies and procedures that provide for certain emergency meetings using telephonic or other electronic notice.

i. Transparency

Transparency requirements and disclosures by registered clearing agencies serve to limit the size of potential information asymmetries between registered clearing agencies, their members, and market participants. Rule 17Ad–22(d)(9) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide market participants with sufficient information for them to identify and evaluate risks and costs associated with using the clearing agency's services.[190] Information regarding the operations and services of each registered clearing agency can be viewed publicly either on the clearing agency's Web site or a Web site maintained by an affiliate of the clearing agency. Because registered clearing agencies are SROs,[191] they must file with the Commission any proposed rule or any proposed change, in addition to, or deletion from its rules, and the Commission reviews all proposed rule changes and publishes them for comment.[192]

Besides providing market participants with information on the risks and costs associated with their services, registered clearing agencies regularly provide information to their members to assist them in managing their risk exposures and potential funding obligations. Some of these disclosures may be common to all members—such as information about the composition of clearing fund assets—while other disclosures that concern particular positions or obligations may only be made to individual members.

As required by CFTC regulations,[193] ICC completes and publicly discloses its responses to the Disclosure Framework for Financial Market Infrastructures published by the CPMI–IOSCO. Besides a principle-by-principle narrative disclosure describing the registered clearing agency's approach to observing the PFMI, the public disclosure also includes an executive summary, a summary of major changes since the last update of the disclosure, and a general background on the registered clearing agency that includes descriptions of the registered clearing agency and the markets it serves, the registered clearing agency's general organization, legal and regulatory framework, and systems design and operations.[194]

C. Consideration of Benefits, Costs, and the Effect on Competition, Efficiency, and Capital Formation

The discussion below sets forth the potential economic effects stemming from the proposed amendments to Rule 17Ad–22(a) and considers the effects of the rules on efficiency, competition, and capital formation. The aggregate economic effects arising from the proposed amendments arise from two sources, the proposed amendments' likely effects on existing registered clearing agencies and the proposed amendments' likely effects on clearing agencies that may register with the Commission in the future. In this section, we consider the potential benefits, costs, and likely effects on efficiency, competition, and capital formation that may arise from these two sources separately. As discussed below, the Commission acknowledges that, when viewed in isolation, the economic effects related to existing registered

[186] *See* ICE Clear Credit Disclosure Framework, *supra* note 145, at 32.

[187] *See* 17 CFR 240.17Ad–22(d)(7).

[188] *See* Exchange Act Release No. 34–52784 (Nov. 16, 2005), 71 FR 70902 (Nov. 23, 2005); Exchange Act Release No. 34–55239 (Feb. 5, 2007), 72 FR 6797 (Feb. 13, 2007).

[189] *See* 17 CFR 240.17Ad–22(d)(6).

[190] *See* 17 CFR 240.17Ad–22(d)(9).

[191] *See supra* Part I.A.1.

[192] *See supra* notes 17–18.

[193] *See* 17 CFR 39.37.

[194] *See* ICE Clear Credit Disclosure Framework, *supra* note 145, at 2.

clearing agencies are likely to be low in magnitude. Nevertheless, when taken together with the economic effects related to future registrants, the Commission preliminarily believes that the economic effects of the proposed amendments could be substantial, particularly insofar as they subject future registrants that are CCPs, CSDs, and SSSs, and are thus likely to play critical roles in the clearance and settlement system, to the enhanced requirements in Rule 17Ad–22(e).

1. Economic Effects Related to Registered Clearing Agencies

As noted above, the Commission anticipates that, as a result of the proposed amendments to Rule 17Ad–22(a), one additional registered clearing agency, ICC, would meet the definition of covered clearing agency. The Commission preliminarily believes that the addition of ICC as a covered clearing agency will incrementally extend the systemic benefits of risk management discussed in the CCA Standards adopting release. These benefits consist of improved financial stability,[195] 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 regimes.[196] The Commission preliminarily believes that the extension of these benefits will likely be incremental and only appear to the extent that the proposed amendments would result in changes to ICC policies and procedures because, as mentioned above, ICC is also regulated as a SIDCO by the CFTC [197] and because Rule 17Ad–22(e) is consistent with comparable regulatory provisions adopted by the CFTC.[198] The following section attempts to estimate particular benefits that could accrue to ICC and its members as a result of ICC being more likely to qualify as a QCCP under the proposed rules.[199] The sections that follow also discuss the costs and the effect on efficiency, competition and capital formation of ICC becoming a covered clearing agency.

a. Benefits

Pursuant to the proposed amendments ICC will be more likely to qualify as a QCCP with respect to cleared security-based swap transactions in non-U.S. jurisdictions that have adopted the BCBS capital framework's QCCP definition. Under the BCBS capital framework, a QCCP is defined as an entity operating as a CCP that is prudentially supervised in a jurisdiction where the relevant regulator has established, and publicly indicated that it applies to the CCP on an ongoing basis, domestic rules and regulations that are consistent with the PFMI. Because Rule 17Ad–22(e) is consistent with the PFMI, the Commission preliminarily believes that foreign bank clearing members as well as foreign banks clearing indirectly through clearing members of ICC may benefit from its qualification as a QCCP. In 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 because, under the BCBS capital framework, capital requirements for bank exposures to QCCPs are lower than capital requirements for bank exposures to non-qualifying CCPs for these products. Moreover, ICC's non-U.S. bank clearing members may experience 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. [200]

The BCBS capital framework affects capital requirements for bank exposures to central counterparties in two important ways. The first relates to trade exposures, defined under the BCBS capital framework as the current and potential future exposure of a clearing member or indirect participant in a CCP arising from OTC derivatives, exchange-traded derivatives transactions, and securities financing transactions. If these exposures are held against a QCCP, they will be assigned a risk weight of 2%. In contrast, exposures against non-qualifying CCPs do not receive lower capital requirements relative to bilateral exposures and are assigned risk weights between 20% and 100%, depending on counterparty credit risk. Second, the BCBS capital framework imposes a cap on risk weights applied to default fund contributions, limiting risk-weighted assets (subject to a 1250% risk weight) to a cap of 20% of a clearing member's trade exposures against a QCCP. This is in contrast to treatment of exposures against non-qualifying CCPs, which are uncapped and subject to a 1250% risk weight. Because QCCP status generally impacts capital treatment, any benefits of ICC attaining QCCP status will likely accrue at least in part, to its foreign clearing members or its foreign indirect participants subject to the BCBS capital framework with respect to their cleared security-based swap transactions.[201] As a result of lower risk weights applied to exposures and a cap on capital requirements against default fund obligations, ICC's qualification as a QCCP may, for those of its clearing members that are subject to the BCBS capital framework, lead to an improved capital position relative to bank members of non-QCCPs with respect to their cleared security-based swap transactions. This may lower funding costs for bank members of QCCPs.

In quantifying the benefits of achieving QCCP status, the Commission based its estimate on publicly available information with regard to ICC. 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 a sample of 15 bank clearing members at ICC and, for each bank, collected information about total assets, risk weighted assets, net income and tier one capital ratio at the holding company level for 2015.[202] The Commission then allocated trade exposures and default fund exposures across the sample of

[195] *See* CCA Standards adopting release, *supra* note 7, at 376–380.

[196] *See* CCA Standards adopting release, *supra* note 7, at 302–317.

[197] *See supra* Part III.B.1.

[198] *See infra* Part III.C.1.b.

[199] 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 of two or four percent to indirect exposures of banks to QCCPs. *See* Capital Requirements for Bank Exposures to Central Counterparties (Apr. 2014), *available at http://www.bis.org/publ/bcbs282.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.

[200] The Commission notes that benefits to bank clearing members may be contingent upon regulators in other jurisdictions taking action to recognize the QCCP status of the registered clearing agency that will become a covered clearing agency due to the proposed amendments.

[201] For a discussion of the effects of QCCP status on competition between bank and non-bank clearing members, see CCA Standards adopting release, *supra* note 7, at 317–322.

[202] 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, 2015 total assets, risk weighted assets, net income, and tier 1 capital ratios were collected from Y–9C reports available at the National Information Center, *https://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx*. For non-U.S. bank holding companies, Commission staff obtained corresponding data from financial statements and supplementary financial materials posted to bank Web sites. Where necessary, values were converted back to U.S. dollars at December 31, 2015 exchange rates obtained from the Federal Reserve, *http://www.federalreserve.gov/releases/h10/hist/*.

bank clearing members based on the level of risk-weighted assets.[203] The Commission measured the impact on risk-weighted assets for non-U.S. bank clearing members under two different capital treatment regimes. The first regime is in the absence of QCCP status, assuming a 100% risk weight applied to trade exposures and 1250% risk weight applied to default fund exposures for non-U.S. members. In the second regime, ICC obtains QCCP status, and banks are allowed to apply a 2% risk weight to trade exposures and a 1250% risk weight to default fund exposures up to a total exposure cap of 20% of trade exposures.[204] 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. The Commission estimates that benefits associated with ICC obtaining QCCP status stemming from lower capital requirements against trade exposures to QCCPs as a result of the adopted rules to have an upper bound of $12.9 million per year, or approximately 0.01% of the total 2015 net income reported by bank clearing members at ICC.[205]

The Commission's analysis is limited in several respects and relies on several assumptions about the nature of trade exposures to ICC. First, a limitation of our proxy for trade exposures and our use of ICC's clearing fund is that the account balances include deposits by bank clearing members, who would experience lower capital requirements under the BCBS capital framework, and non-bank clearing members who would not. As a result, the Commission assumes, for the purposes of establishing an upper bound for the benefits to market participants that are associated with QCCP status for ICC under the adopted rules, that the balance of both ICC's margin account and ICC's default fund are attributable only to bank clearing members. Additionally, we assume an extreme case where, in the absence of QCCP status, trade exposures against a CCP would be assigned a 100% risk weight, causing the largest possible shock to risk-weighted assets for affected banks.

Lower capital requirements on trade exposures to ICC would produce effects in the real economy only under certain conditions. First, agency problems, taxes, or other capital market imperfections could result in banks targeting a particular capital structure. Second, capital constraints on bank clearing members subject to the BCBS capital framework must bind so that higher capital requirements on bank clearing members subject to the BCBS capital framework in the absence of QCCP status would cause these banks to exceed capital constraints if they chose to redistribute capital to shareholders or invest capital in projects with returns that exceed their cost of capital in the absence of QCCP status for ICC for security-based swap clearing. Using publicly available data, however, it is not currently possible to determine whether capital constraints will bind for bank clearing members when rules applying the BCBS capital framework come into force, so to estimate an upper bound for the effects of QCCP status on bank clearing members we assume that tier one capital constraints for all bank clearing members of ICC would bind in an environment with zero weight placed on bank exposures to CCPs.[206]

For the purposes of quantifying potential benefits from QCCP status, the Commission has also assumed that banks choose to adjust to new capital requirements by deleveraging. In particular, the Commission 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 Basel framework of 8.5%. We measure the ongoing costs to each non-U.S. bank by multiplying the implied change in total assets by each bank's return on assets, estimated using up to 12 years of annual financial statement data.[207]

The BCBS capital framework for exposures to CCPs yields additional benefits for QCCPs that the Commission is currently unable to quantify due to 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 that are subject to the BCBS capital framework share some of the benefits of QCCP status.

Furthermore, the fact that the BCBS capital framework applies to bank clearing members may have important implications for competition and concentration. While Rule 17Ad–22(e) may extend lower capital requirements against exposures to QCCPs to the QCCP's non-U.S. bank clearing members, the benefits of QCCP status will still be limited to bank clearing members. However, the costs associated with compliance with Rule 17Ad–22(e) 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 members of QCCPs that are not banks and that will not experience benefits with respect to the BCBS capital framework. This may result in an unintended consequence of an increased concentration of clearing activity among ICC's bank clearing members. This increased concentration could mean that each of the remaining

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[203] For example, one bank in the sample, with 5.06% of total risk-weighted assets, was assigned 5.06% of the total trade and default fund exposures while another bank in the sample, with 3.51% of total risk weighted assets, was assigned 3.51% of these exposures. Because trade exposures of ICC members against ICC are nonpublic, the Commission used the balance of ICC margin deposits and deposits in lieu of margin held at ICC, $14.2 billion, as a proxy for trade exposures. ICC's 2015 clearing fund deposits were valued at $1.56 billion. *See* ICC, 2015 Annual Report, *available at https://www.theice.com/publicdocs/regulatory_filings/ICE_Clear_Credit_Financial_Statements_2014_2015.pdf*

[204] The BCBS capital framework allows banks to compute default fund exposures in two ways. Method 1 involves computing capital requirements for each member proportional to its share of an aggregate capital requirement for all clearing members in a scenario where to average clearing members default. The Commission currently lacks data necessary to compute default fund exposures under this approach, instead we use Method 2, which caps overall exposure to a QCCP at 20% of trade exposures. *See* BCBS capital framework, *supra* note 199, Annex 4, paras. 121–25 (outlining two methods for computing default fund exposures).

[205] The Commission first quantified the benefits related to ICC's attaining QCCP status for ICC's bank clearing members and bank indirect participants with respect to all reported exposures. Over the period March 2009 through August 2016 the gross notional value of security-based swap transactions cleared by ICE Clear Credit comprised 9% 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 0.09.

[206] The Commission notes that, at present, no bank in its sample of bank clearing members of ICC is bound by capital requirements under the BCBS capital framework. For U.S. bank holding companies tier 1 capital ratios were collected from Y–9C reports available at the National Information Center, *https://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx*. For non-U.S. bank holding companies, Commission staff obtained corresponding data from financial statements and supplementary financial materials posted to bank Web sites. The Commission used data from 2013–2016 for its sample of U.S. bank clearing members, and from 2012–2015 for non-U.S. bank clearing members and assumed no bank-specific countercyclical capital buffers for these banks. This suggests a minimum tier 1 capital ratio of 10.5%, exceeding the BCBS capital framework's minimum by 2.0%.

[207] 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.

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 defaulting members' portfolios, and clearing agencies that rely on clearing members to participate in default auctions would hold auctions with fewer participants.

The Commission preliminarily believes 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 and ICEEU have several overlapping members and ICC clears all the contracts that ICEEU clears. Thus in a situation where ICEEU is a QCCP while ICC is not, common foreign bank members of the two agencies may obtain many of the benefits of ICC having QCCP status by moving their clearing business to ICEEU.

However, under such a scenario, the benefits of ICC having QCCP status for security-based swaps would not be fully realized for a number of reasons. First, not all clearing members of ICC are also clearing members of ICEEU. These members will not be able to move their clearing business to ICEEU. Second, ICEEU only clears a subset of the contracts that ICC does. Thus even common foreign bank members of ICC and ICEEU may not be able to move their entire clearing business from ICC to ICEEU. The Commission therefore preliminarily believes that the extent to which foreign bank clearing members of ICC could obtain QCCP benefits by moving their clearing business from ICC to ICEEU is limited.

b. Costs

As noted above, ICC is a SIDCO that is also regulated by the CFTC. Based on its consultation and coordination with other regulators, the Commission believes Rule 17Ad–22(e) is consistent and comparable, where possible and appropriate, with the rules and policy statements adopted by the FRB and the rules adopted by the CFTC, as each of the three rule sets are intended to be consistent with the headline principles in the PFMI. The Commission's rules differ from those requirements adopted by the CFTC and FRB in terms of the specific portions of the key considerations and explanatory text in the PFMI that are, or are not, referenced or emphasized.

Because of the abovementioned similarities between the CFTC's regulatory regime for SIDCOs and Rule 17Ad–22(e), the Commission preliminarily believes that, at the time of this proposal, ICC's policies and procedures are already likely to be in compliance with many of the requirements in Rule 17Ad–22(e). The Commission further notes that ICC's principle-by-principle summary narrative disclosure suggests that it would be unlikely to need to make significant changes to its operations, policies, and procedures in order to comply with Rule 17Ad–22(e).[208]

In light of the abovementioned similarity between the CFTC's regulatory regime for SIDCOs and Rule 17Ad–22(e), the Commission preliminarily believes the economic costs that ICC will bear as a result of the proposed amendments will be related to the establishment, implementation and maintenance of certain policies and procedures under Rule 17Ad–22(e). We preliminarily estimate these costs will at most include one-time costs of approximately $667,917 [209] and annual costs of approximately $146,249.[210]

[208] *See* ICE Clear Credit Disclosure Framework, *supra* note 145.

[209] Calculated as ((Assistant General Counsel for 440 hours at $440 per hour) + (Chief Compliance Officer for 146 hours at $501 per hour) + (Chief Financial Officer for 50 hours at $501 per hour) + (Compliance Attorney for 377 hours at $345 per hour) + (Computer Operations Department Manager for 344 hours at $416 per hour) + (Financial Analyst for 70 hours at $259 per hour) + (Senior Business Analyst for 85 hours at $259 per hour) + (Senior Programmer for 75 hours at $313 dollars per hour) + (Senior Risk Management Specialist for 114 hours at $338 per hour)) = $667,917.

[210] Calculated as ((Administrative Assistant for 20 hours at $76 per hour) + (Compliance Attorney for 279 hours at $345 per hour) + (Computer Operations Department Manager for 12 hours at $416 per hour) + (Risk Management Specialist for 183 hours at $188 per hour) + (Senior Business Analyst for 22 hours at $259 per hour) + (Senior Risk Management Specialist for 10 hours at $338 per hour)) = $146,249 per year. To monetize the internal costs the Commission staff used data from the SIFMA publications, Management and Professional Earnings in the Security Industry—2013, and Office Salaries in the Securities Industry—2013, modified by the Commission staff 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. These figures have been adjusted for inflation using data published by the Bureau of Labor Statistics. Commission staff also estimated an hourly rate for a Chief Financial Officer. The Web site *www.salary.com* reports that median CFO annual salaries in 2016 were $306,789. A Grant Thornton LLP survey estimated that in 2016 public company CFOs will receive an average annual salary of $303,975. Using an approximate midpoint of these two estimates of $305,000 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 $906 per hour.

c. Effects on Efficiency, Competition, and Capital Formation

The proposed amendments do not alter the covered clearing agency status of DTC, FICC, NSCC and OCC. The Commission preliminarily believes that the proposed 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 proposed amendments do not alter the covered clearing agency status of ICEEU, the Commission preliminarily believes that they are likely to generate economic effects for this entity. This is because ICC clears all security-based transactions that are cleared by ICEEU. Because the proposed amendments are likely to result in uniform regulatory requirements for similar risks at both clearing agencies, they could potentially cause business to shift from ICEEU to ICC. This could translate into a loss of economies of scale for ICEEU which, in turn, would result in higher clearing fees and higher transaction costs in cleared products.

2. Economic Effects Related to Future Registrants

Besides affecting the application of Rule 17Ad–22 to the existing set of registered clearing agencies, the proposed amendments to Rule 17Ad–22 would, if adopted, affect the regulation of clearing agencies that register with the Commission in the future. In particular, under the proposed revision to Rule 17Ad–22(a)(5), any clearing agency that provides the services of a CCP, CSD, or SSS would be a covered clearing agency. This means that covered clearing agencies would no longer be limited to those that have been designated as systemically important by the FSOC or are involved in activities that meet the definition of activities with a complex risk profile, nor would clearing agencies for which the CFTC is the supervisory agency under the Clearing Supervision Act be excluded.

Because the Commission is unable to predict with any precision the number of clearing agencies likely to register in the future, much less the number that are likely to be CCPs, CSDs, or SSSs, it is unable to quantify the aggregate economic effects that would flow as a result of the effect of the proposed amendments to Rule 17Ad–22(a) on future registrants. The Commission notes, however, that it preliminarily believes that the proposed amendments would generally increase the likelihood Rule 17Ad–22(e) would apply to a new registrant. Where possible, the

Commission has attempted to estimate the benefits and costs it would expect the proposed amendments to Rule 17Ad–22(a) to have on a single new registrant.

a. Benefits

The Commission preliminarily believes that a benefit of the proposed amendments may be that they reduce the costs that potential entrants into the market for clearance and settlement services could expect to face to determine whether they would face regulation as covered clearing agencies. Under the proposed amendments, any registered clearing agency that expects to provide the services of a CCP, CSD, or SSS would also 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 proposed amendments could reduce the costs associated with registration. The Commission preliminarily believes that a reasonable estimate of cost reduction a single registrant is likely to experience is $3,382, attributable to reduced legal expenses associated with determining whether or not the registrant will also be regulated as a covered clearing agency.[211]

In the absence of the proposed amendments, without designation by the FSOC or a Commission determination, a registered clearing agency would be subject to Rule 17Ad–22(d). The proposed amendments 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 the requirements under Rule 17Ad–22(e) impose higher risk management standards on potential entrant CCPs, CSDs, and SSSs than they would impose on themselves while subject to Rule 17Ad–22(d), the Commission preliminarily believes the proposed amendments to Rule 17Ad–22(a) may improve financial stability. As discussed in the CCA Standards adopting release, 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, conditional on a default event occurring.[212] Increased stability may also come as a result of the higher risk management standards at potential entrants effectively lowering the probability that either the entrant clearing agencies or their members default.

b. Costs

In the absence of the proposed amendments, without designation by the FSOC or a Commission determination, a registered clearing agency would be subject to Rule 17Ad–22(d). To the extent that requirements under Rule 17Ad–22(e) would impose additional costs on potential entrants who would otherwise be regulated under Rule 17Ad–22(d), the Commission believes that the proposed amendments may impose additional costs on potential entrants.

In the CCA Standards adopting release,[213] the Commission estimated specific costs that registered clearing agencies would bear related to holding sufficient qualifying liquid resources under Rule 17Ad–22(e)(7). These estimates depended on information about the current operation of registered clearing agencies that are subject to Rule 17Ad–22(e) and so the Commission is unable to provide precise estimates of costs associated with these requirements that potential entrants may bear as a result of the proposed amendments to Rule 17Ad–22(a). However if a potential entrant resembles the average covered clearing agency, the Commission would expect compliance with Rule 17Ad–22(e)(7) to cost the entrant between $24 million and $40 million.[214] In addition, the Commission estimates 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, $608,578.[215] Furthermore, Rules 17Ad–22(e)(3), (4), (6), (7), (15) and (21) all include elements of review by either a covered clearing agency's board or its management on an ongoing basis. The Commission estimates the cost of ongoing review for these adopted rules at approximately $39,376 per year for a potential entrant, as estimated in the CCA Standards adopting release.[216]

c. Effects on Efficiency, Competition, and Capital Formation

The Commission preliminarily believes there are unlikely to be substantial direct effects on efficiency and capital formation from the proposed amendments' impact on potential entrants. The Commission acknowledges, however, that there are potential effects on competition that may arise from how the proposed amendments would affect the regulatory treatment of registered clearing agencies and the barriers to entry into the market for services provided by CCPs, CSDs, and SSSs.

The proposed amendments would likely result in more consistent regulatory treatment of firms that provide similar services to securities markets. By imposing Rule 17Ad–22(e) on all CCPs, CSDs, and SSSs, regardless of FSOC designation or their engagement in activities with a more complex risk profile, the proposed amendments to Rule 17Ad–22(a) would mitigate the risk that registered clearing agencies with similar businesses would be subject to substantially different regulatory regimes. The Commission preliminarily believes that more uniform treatment under the proposed amendments may provide a more level playing field for CCPs, CSDs, and SSSs. By contrast, in the absence of the proposed amendments, an entrant CCP, CSD, or SSS, that did not engage in activity with a more complex risk profile could initially receive a

[211] The Commission calculated this reduction in costs as ((Assistant General Counsel for 2 hours at $440 per hour) + (Compliance Attorney for 3 hours at $300 per hour) + (Outside Counsel for 5 hours at $400 per hour)) = $3,382.

[212] *See* CCA Standards adopting release, *supra* note 7, at 380.

[213] *See id.* at 346.

[214] To arrive at this range, the Commission divided the maximum and minimum costs associated with compliance estimated in the CCA Standards adopting release by 5 covered clearing agencies. *See id.*

[215] 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 $467 per hour) + (Compliance Attorney for 365 hours at $310 per hour) + (Administrative Assistant for 2 hours at $72 per hour) + (Computer Operations Department Manager for 300 hours at $361 per hour) + (Senior Business Analyst for 85 hours at $245 per hour) + (Senior Risk Management Specialist for 114 hours at $249 per hour) + (Chief Compliance Office for 102 hours at $441 per hour) + (Senior Programmer for 53 hours at $282 per hour) + (Chief Financial Officer for 50 hours at $892 per hour) + (Financial Analyst for 70 hours at $245 per hour)) = $592,215. Because only Rule 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.

[216] To estimate the cost of board review, the Commission used a recent 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. 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 the SIFMA table, *see infra* note 778. The Commission estimates the total cost of review for each clearing agency as follows: ((Board Review for 32 hours at $1000 per hour) + (Management Review for 16 hours at $461 per hour)) = $39,376. The Commission requests comment on this estimate.

competitive advantage by being regulated under 17Ad–22(d) until becoming a designated clearing agency because they may internalize less of the risk they pose to the financial system.

On the other hand, as discussed in the CCA Standards adopting release, costs resulting from regulation under Rule 17Ad–22(e) as a result of the proposed amendments to Rule 17Ad–22(a) may have the effect of raising already high barriers to entry.[217] 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.[218]

3. Alternatives

As an alternative to the proposed approach, the Commission considered alternative definitions of ''covered clearing agency.'' Specifically, the Commission considered more limited definitions that would not have included CSDs or SSSs along with CCPs within the definition. An alternative approach that included only CCPs within the definition of ''covered clearing agency'' would still include ICC in the set of covered clearing agencies. The Commission preliminarily believes that such an approach compares unfavorably to the proposed approach because, as discussed in Parts II.A.1 and 2, CSDs perform a critical role in the U.S. securities settlement markets by helping to reduce risk and by providing transparency to the markets and, hence, it is appropriate to apply enhanced requirements under Rule 17Ad–22(e) to CSDs.

Similarly, the Commission could have proposed to exclude SSSs from the definition of covered clearing agency. This would have no effect on the set of registered entities that would be covered clearing agencies and no effect on the immediate economic effects of the proposed amendments. However, this could potentially mean that an entrant clearing agency that solely performs the functions of an SSS would be subject only to Rule 17Ad–22(d). As above, the Commission preliminarily believes that it is appropriate to apply enhanced requirements under Rule 17Ad–22(e) to SSSs because of the critical role they play in the national system for clearance and settlement.

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.'' [219] 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 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.[220]

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 proposing to revise the respondents under Rule 17Ad–22(e) to account for the proposed amendment to the definition of ''covered clearing agency'' and related amendments, the Commission will use the same title and control number: ''Clearing Agency Standards for Operation and Governance,'' OMB Control No. 3235–0695.

A. Summary of Collection of Information and Use of Information [221]

1. Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[222]

The purpose of this collection of information is to reduce the potential for legal risk at covered clearing agencies, such as the risk that participants face legal uncertainty due to a lack of clarity or completeness regarding conflicts with applicable laws.

2. Rule 17Ad–22(e)(2)

Rules 17Ad–22(e)(2)(i) through (iii) require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency, and support the public interest requirements of Section 17A of the Exchange Act, and the objectives of owners and participants. Rules 17Ad–22(e)(2)(iv) and (v) require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities and to specify clear and direct lines of responsibility. Rule 17Ad–22(e)(2)(vi) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the clearing agency.[223]

The purpose of this collection of information is to prioritize the safety and efficiency of covered clearing agencies, to help ensure that each covered clearing agency's governance arrangements consider the interests of relevant stakeholders, to promote the establishment of boards of directors at covered clearing agencies that are composed of qualified members with clear and direct lines of responsibility, and to promote accountability of the board of directors and senior management.

3. Rule 17Ad–22(e)(3)

Rule 17Ad–22(e)(3) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management

[217] *See* CCA Standards adopting release, *supra* note 7, at 317–318.

[218] *See, e.g.,* Clearing Agency Standards adopting release, *supra* note 31, at 66263 n.481.

[219] *See* 44 U.S.C. 3501 *et seq.;* 44 U.S.C. 3502(3).

[220] *See* 44 U.S.C. 3507(a)(1)(D); *see also* 5 CFR 1320.5(a)(1)(iv).

[221] In addition to the discussion of the purposes of the collections of information set forth in Part IV.A, the Commission notes that the policies and procedures 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.

[222] *See* 17 CFR 240.17Ad–22(e)(1); CCA Standards adopting release, *supra* note 7, at 463.

[223] *See* 17 CFR 240.17Ad–22(e)(2); CCA Standards adopting release, *supra* note 7, at 463.

framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency. Rule 17Ad–22(e)(3)(i) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, and subject them to review on a specified periodic basis and approval by the board of directors annually. Rule 17Ad–22(e)(3)(ii) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it establishes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses. Rule 17Ad–22(e)(iii) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide risk management and internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors. Rule 17Ad–22(e)(3)(iv) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide risk management and internal audit personnel with oversight by and a direct reporting line to a risk management committee and an independent audit committee of the board of directors, respectively. Rule 17A–22(e)(3)(v) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an independent audit committee.[224]

The purpose of this information collection is to enhance each covered clearing agency's ability to identify, monitor, and manage the risks that covered clearing agencies face, including by subjecting the relevant policies and procedures to regular review, and to facilitate an orderly recovery and wind-down process in the event that a covered clearing agency is unable to continue operating as a going concern.

[224] *See* 17 CFR 240.17Ad–22(e)(3); CCA Standards adopting release, *supra* note 7, at 464.

4. Rule 17Ad–22(e)(4)

Rule 17Ad–22(e)(4) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes.

Rule 17Ad–22(e)(4)(i) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. Rule 17Ad–22(e)(4)(ii) requires a covered clearing agency that provides CCP services, and that is ''systemically important in multiple jurisdictions'' or ''a clearing agency involved in activities with a more complex risk profile,'' to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources, to the extent not already maintained pursuant to Rule 17Ad–22(e)(4)(i), at a minimum level necessary to enable it to cover a wide range of foreseeable stress scenarios, including but not limited to the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. Meanwhile, Rule 17Ad–22(e)(4)(iii) requires a covered clearing agency that is not subject to Rule 17Ad–22(e)(4)(ii) to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources, to the extent not already maintained pursuant to Rule 17Ad–22(e)(4)(i), at the minimum to enable it to cover a wide range of foreseeable stress scenarios, including the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. Rule 17Ad–22(e)(4)(iv) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to include prefunded financial resources, exclusive of assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating the financial resources available to meet the standards under Rules 17Ad–22(e)(4)(i) through (iii), as applicable. Rule 17Ad–22(e)(4)(v) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain the financial resources required under proposed Rules 17Ad–22(e)(4)(ii) and (iii), as applicable, in combined or separately maintained clearing or guaranty funds.

Rule 17Ad–22(e)(4)(vi) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to test the sufficiency of its total financial resources available to meet the minimum financial resource requirements under Rules 17Ad–22(e)(4)(i) through (iii), as applicable, by conducting stress testing of its total financial resources at least once each day using standard predetermined parameters and assumptions. Rule 17Ad–22(e)(4)(vi) also requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to conduct a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and consider modifications to ensure they are appropriate for determining the covered clearing agency's required level of default protection in light of current market conditions. When the products cleared or markets served by a covered clearing agency display high volatility or become less liquid, or when the size or concentration of positions held by the entity's participants increases significantly, the proposed rule would require a covered clearing agency to have policies and procedures for conducting comprehensive analyses of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly. Rule 17Ad–22(e)(4)(vi) also requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for the reporting of the results of this analysis to the appropriate decision makers at the covered clearing agency, including its risk management committee or board of directors, and to require the use of the results to evaluate the adequacy of and to adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management policies and procedures, in supporting compliance with the minimum financial resources requirements in Rules 17Ad–22(e)(4)(i) through (iii), as applicable.

Rule 17Ad–22(e)(4)(vii) requires a covered clearing agency to establish, implement, maintain and enforce

written policies and procedures reasonably designed to require a model validation for its credit risk models not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management policies and procedures.

Rule 17Ad–22(e)(4)(viii) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to address allocation of credit losses the covered clearing agency may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the covered clearing agency may borrow from liquidity providers.

Rule 17Ad–22(e)(4)(ix) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to describe the covered clearing agency's process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated.[225]

The purpose of this information collection is to identify and limit credit exposures to participants and to satisfy all of its settlement obligations in the event of a participant default, to address the allocation of credit losses if collateral and other resources are insufficient to fully cover its credit exposures following a participant default, and to describe the covered clearing agency's process to replenish financial resources following such a default.

5. Rule 17Ad–22(e)(5)

Rule 17Ad–22(e)(5) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and also require policies that set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its own or its participants' credit exposures. In addition, Rule 17Ad–22(e)(5) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to include a not-less-than-annual review of the sufficiency of a covered clearing agency's collateral haircuts and concentration limits.[226]

The purpose of the information collection is to enable a covered clearing agency to be able to maintain sufficient collateral by using appropriately conservative haircuts and concentration limits.

6. Rule 17Ad–22(e)(6)

Rule 17Ad–22(e)(6) requires a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management on an ongoing basis and regularly reviewed, tested, and verified. Rule 17Ad–22(e)(6)(i) requires a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in a margin system that, at a minimum, considers and produces margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market. Rule 17Ad–22(e)(6)(ii) requires a covered clearing agency that provides CCP services to establish implement, maintain and enforce written policies and procedures reasonably designed to ensure that the margin system would mark participant positions to market and collect margin, including variation margin or equivalent charges if relevant, at least daily, and include the authority and operational capacity to make intraday margin calls in defined circumstances. Rule 17Ad–22(e)(6)(iii) requires a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to calculate margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. Rule 17Ad–22(e)(6)(iv) requires a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. Rule 17Ad–22(e)(6)(v) requires a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the use of an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.

Rule 17Ad–22(e)(6)(vi) requires a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish a risk-based margin system that is monitored by management on an ongoing basis. Rule 17Ad–22(e)(6)(vi) also requires a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review, test, and verify its risk-based margin system by conducting backtests of its margin model at least once each day using standard predetermined parameters and assumptions. Rule 17Ad–22(e)(6)(vi) also requires a covered clearing agency that provides CCP services to 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 and a review of its parameters and assumptions for backtesting on at least a monthly basis, and considering modifications to ensure the backtesting practices are appropriate for determining the adequacy of the covered clearing agency's margin resources. Rule 17Ad–22(e)(6)(vi) also requires a covered clearing agency that provides CCP services to 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 and a review of its parameters and assumptions for backtesting more frequently than monthly during periods of time when the products cleared or markets served display high volatility or become less liquid, and when the size or concentration of positions held by the covered clearing agency's participants increases or decreases significantly. Rule 17Ad–22(e)(6)(vi) also requires a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review, test, and verify its risk-based margin system by reporting the results of its analyses above to appropriate decision makers at the covered clearing agency, including but

[225] *See* 17 CFR 240.17Ad–22(e)(4); CCA Standards adopting release, *supra* note 7, at 464–466.

[226] *See* 17 CFR 240.17Ad–22(e)(5); CCA Standards adopting release, *supra* note 7, at 466–467.

not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management framework.

Finally, Rule 17Ad–22(e)(6)(vii) requires a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to requires a model validation for the covered clearing agency's margin system and related models to be performed not less than annually, or more frequently as may be contemplated by the covered clearing agency's risk management framework established pursuant to Rule 17Ad–22(e)(3).[227]

The purpose of the information collection is to enable a covered clearing agency to be able to collect sufficient margin subject to regular sensitivity analysis, monthly backtesting, and an annual model validation.

7. Rule 17Ad–22(e)(7)

Rule 17Ad–22(e)(7) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by it, by meeting, at a minimum, the ten requirements specified in the rule.

Rule 17Ad–22(e)(7)(i) requires that a covered clearing agency's policies and procedures be reasonably designed to ensure that it maintains sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that includes the default of the participant family that would generate the largest aggregate payment obligation for it in extreme but plausible market conditions.

Rule 17Ad–22(e)(7)(ii) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it holds qualifying liquid resources sufficient to meet the minimum liquidity resource requirement in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members.

Rule 17Ad–22(e)(7)(iii) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it uses accounts and services at a Federal Reserve Bank, pursuant to Section 806(a) of the Clearing Supervision Act, or other relevant central bank, when available and where determined to be practical by the board of directors of the covered clearing agency, to enhance its management of liquidity risk.

Rule 17Ad–22(e)(7)(iv) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it undertakes due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has sufficient information to understand and manage the liquidity provider's liquidity risks, and the capacity to perform as required under its commitments to provide liquidity.

Rule 17Ad–22(e)(7)(v) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that the covered clearing agency maintains and, on at least an annual basis, tests with each liquidity provider, to the extent practicable, its procedures and operational capacity for accessing each type of relevant liquidity resource.

Rule 17Ad–22(e)(7)(vi)(A) through (C) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement of Rule 17Ad–22(e)(7)(i) by (A) conducting stress testing of its liquidity resources at least once each day using standard and predetermined parameters and assumptions; (B) conducting a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate for determining the covered clearing agency's identified liquidity needs and resources in light of current and evolving market conditions at least once each month; and (C) conducting a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources more frequently when products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by participants increases significantly, or in other circumstances described in the covered clearing agency's policies and procedures. Rule 17Ad–22(e)(7)(vi)(D) also requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in reporting the results of the analyses performed under Rules 17Ad–22(e)(7)(vi)(B) and (C) to appropriate decision makers, including the risk management committee or board of directors, at the covered clearing agency for use in evaluating the adequacy of and adjusting its liquidity risk management framework.

Rule 17Ad–22(e)(7)(vii) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in performing an annual or more frequent model validation of its liquidity risk models.

Rule 17Ad–22(e)(7)(viii) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to address foreseeable liquidity shortfalls that would not be covered by its liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.

Rule 17Ad–22(e)(7)(ix) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to describe its process for replenishing any liquid resources that it may employ during a stress event.

Rule 17Ad–22(e)(7)(x) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it, at least once a year, evaluates the feasibility of maintaining sufficient liquid resources at a minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions if the covered clearing agency provides CCP services and is either systemically important in multiple jurisdictions or a

[227] *See* 17 CFR 240.17Ad–22(e)(6); CCA Standards adopting release, *supra* note 7, at 467–468.

clearing agency involved in activities with a more complex risk profile.[228]

The purpose of this information collection is to identify and limit liquidity risk so that a covered clearing agency can satisfy its settlement obligations on an ongoing and timely basis by holding a sufficient amount of qualifying liquid resources and performing regular stress testing of its liquid resources. It is also to help ensure that a covered clearing agency addresses foreseeable liquidity shortfalls and can replenish any liquid resources that it may employ in a stress event. It is also to help ensure that a covered clearing agency manages the risks posed by its liquidity providers.

8. Rule 17Ad–22(e)(8)

Rule 17Ad–22(e)(8) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, either intraday or in real time.[229]

The purpose of this information collection is to promote consistent standards of timing and reliability in the settlement process.

9. Rule 17Ad–22(e)(9)

Rule 17Ad–22(e)(9) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to conduct its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency, and minimizes and manages credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency.[230]

The purpose of this information collection is to promote reliability in a covered clearing agency's settlement operations.

10. Rule 17Ad–22(e)(10)

Rule 17Ad–22(e)(10) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments and operational practices that identify, monitor, and manage the risk associated with such physical deliveries.[231]

The purpose of this information collection is to provide a covered clearing agency's participants with the information necessary to evaluate the risks and costs associated with participation in the covered clearing agency.

11. Rule 17Ad–22(e)(11)

Rule 17Ad–22(e)(11)(i) requires a covered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain securities in an immobilized or dematerialized form for their transfer by book entry, ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities. Rule 17Ad–22(e)(11)(ii) requires a covered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to implement internal auditing and other controls to safeguard the rights of securities issuers and holders and prevent the unauthorized creation or deletion of securities, and conduct periodic and at least daily reconciliation of securities issues it maintains. Rule 17Ad–22(e)(11)(iii) requires a covered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to protect assets against custody risk through appropriate rules and procedures consistent with relevant laws, rules, and regulations in jurisdictions where it operates.[232]

The purpose of this information collection is to reduce securities transfer processing costs and the risks associated with securities settlement and custody, as well as increase the speed and efficiency of the settlement process.

12. Rule 17Ad–22(e)(12)

Rule 17Ad–22(e)(12) requires a covered clearing agency, for transactions that involve the settlement of two linked obligations, to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other, regardless of whether the covered clearing agency settles on a gross or net basis and when finality occurs.[233]

The purpose of this information collection is to promote the elimination of principal risk in transactions with linked obligations.

13. Rule 17Ad–22(e)(13)

Rule 17Ad–22(e)(13) requires a covered clearing agencies providing CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.[234]

The purpose of this information collection is to facilitate the functioning of a covered clearing agency in the event that a participant fails to meet its obligations, as well as limit the extent to which a participant's failure can spread to other participants or the covered clearing agency itself.

14. Rule 17Ad–22(e)(14)

Rule 17Ad–22(e)(14) requires a covered clearing agency that is a security-based swap clearing agency or a complex risk profile clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a member's customers and the collateral provided to the covered clearing agency with respect to those positions, and effectively protect such positions and related collateral from the default or insolvency of that member.[235]

The purpose of this information collection is to facilitate the safe and effective holding and transfer of customers' positions and collateral in the event of a participant's default or insolvency.

15. Rule 17Ad–22(e)(15)

Rule 17Ad–22(e)(15) requires a covered clearing agency to establish, implement, maintain and enforce

[228] *See* 17 CFR 240.17Ad–22(e)(7); CCA Standards adopting release, *supra* note 7, at 468–471.

[229] *See* 17 CFR 240.17Ad–22(e)(8); CCA Standards adopting release, *supra* note 7, at 471.

[230] *See* 17 CFR 240.17Ad–22(e)(9); CCA Standards adopting release, *supra* note 7, at 471.

[231] *See* 17 CFR 240.17Ad–22(e)(10); CCA Standards adopting release, *supra* note 7, at 472.

[232] *See* 17 CFR 240.17Ad–22(e)(11); CCA Standards adopting release, *supra* note 7, at 472.

[233] *See* 17 CFR 240.17Ad–22(e)(12); CCA Standards adopting release, *supra* note 7, at 472.

[234] *See* 17 CFR 240.17Ad–22(e)(13); CCA Standards adopting release, *supra* note 7, at 472–473.

[235] *See* 17 CFR 240.17Ad–22(e)(14); CCA Standards adopting release, *supra* note 7, at 473–474.

written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize. Rule 17Ad–22(e)(15)(i) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken. Rule 17Ad–22(e)(15)(ii) requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for holding liquid net assets funded by equity equal to the greater of either six months of its current operating expenses or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under Rule 17Ad–22(e)(3)(ii). Rule 17Ad–22(e)(15)(ii) also requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for monitoring its business operations and reducing the likelihood of losses. Rule 17Ad–22(e)(15)(iii) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for maintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required by the rule, as discussed above.[236]

The purpose of this information collection is to mitigate the potential impairment of a covered clearing agency as a result of a decline in revenues or increase in expenses.

16. Rule 17Ad–22(e)(16)

Rule 17Ad–22(e)(16) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to safeguard its own and its participants' assets and minimize the risk of loss and delay in access to these assets. Rule 17Ad–22(e)(16) also requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to invest such assets in instruments with minimal credit, market, and liquidity risks.[237]

17. Rule 17Ad–22(e)(17)

Rule 17Ad–22(e)(17) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risk. Rule 17Ad–22(e)(17)(i) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. Rule 17Ad–22(e)(17)(ii) requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. Finally, Rule 17Ad–22(e)(17)(iii) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a business continuity plan that addresses events posing a significant risk of disrupting operations.[238]

The purpose of this information collection is to limit operational disruptions that may impede the proper functioning of a covered clearing agency.

18. Rule 17Ad–22(e)(18)

Rule 17Ad–22(e)(18) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other FMUs. Rule 17Ad–22(e)(18) also requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency and to monitor compliance with participation requirements on an ongoing basis.[239]

The purpose of this information collection is to enable a covered clearing agency to ensure that only entities with sufficient financial and operational capacity are direct participants in the covered clearing agency, while still ensuring that all qualified persons can access a covered clearing agency's services. The purpose of this information collection is also to enable a covered clearing agency to monitor that participation requirements are met on an ongoing basis and to identify a participant experiencing financial difficulties before the participant fails to meet its settlement obligations.

19. Rule 17Ad–22(e)(19)

Rule 17Ad–22(e)(19) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants in the covered clearing agency to access the covered clearing agency's payment, clearing, or settlement facilities. In addition, Rule 17Ad–22(e)(19) also requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review the material risks to the covered clearing agency arising from such tiered participation arrangements.[240]

The purpose of this information collection is to enable a covered clearing agency to identify and manage risks posed by non-member entities, such as the customers of clearing members.

20. Rule 17Ad–22(e)(20)

Rule 17Ad–22(e)(20) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link with one or more other clearing agencies, FMUs, or trading markets.[241]

[236] *See* 17 CFR 240.17Ad–22(e)(15); CCA Standards adopting release, *supra* note 7, at 474.

[237] *See* 17 CFR 240.17Ad–22(e)(16); CCA Standards adopting release, *supra* note 7, at 474.

[238] *See* 17 CFR 240.17Ad–22(e)(17); CCA Standards adopting release, *supra* note 7, at 474.

[239] *See* 17 CFR 240.17Ad–22(e)(18); CCA Standards adopting release, *supra* note 7, at 474.

[240] *See* 17 CFR 240.17Ad–22(e)(19); CCA Standards adopting release, *supra* note 7, at 474.

[241] *See* 17 CFR 240.17Ad–22(e)(20); CCA Standards adopting release, *supra* note 7, at 475.

The purpose of this information collection is to enable a covered clearing agency to identify and manage risks posed by linkages to other entities, such as other clearing agencies, FMUs, or trading markets.

21. Rule 17Ad–22(e)(21)

Rule 17Ad–22(e)(21) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the covered clearing agency to be efficient and effective in meeting the requirements of its participants and the markets it serves. Additionally, the rule requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to have the management of a covered clearing agency regularly review the efficiency and effectiveness of the covered clearing agency's (i) clearing and settlement arrangement; (ii) operating structure, including risk management policies, procedures, and systems; (iii) scope of products cleared or settled; and (iv) use of technology and communications procedures.[242]

The purpose of this information collection is to ensure that the services provided by a covered clearing agency do not become inefficient and to promote the sound operation of a covered clearing agency.

22. Rule 17Ad–22(e)(22)

Rule 17Ad–22(e)(22) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to use, or at a minimum, accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement.[243]

The purpose of this information collection is to ensure the prompt and accurate clearance and settlement of securities transactions by enabling participants to communicate with a clearing agency in a timely, reliable, and accurate manner.

23. Rule 17Ad–22(e)(23)

Rule 17Ad–22(e)(23) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to (i) publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures; (ii) provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency; and (iii) publicly disclose relevant basic data on transaction volume and values.

Rule 17Ad–22(e)(23)(iv) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain clear and comprehensive rules and procedures that provide for a comprehensive public disclosure that describes the covered clearing agency's material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework, accurate in all material respects at the time of publication, including (i) a general background of the covered clearing agency, including its function and the market it serves, basic data and performance statistics on its services and operations, such as basic volume and value statistics by product type, average aggregate intraday exposures to its participants, and statistics on the covered clearing agency's operational reliability, and a description of its general organization, legal and regulatory framework, and system design and operations; (ii) a standard-by-standard summary narrative for each applicable standard set forth in Rules 17Ad–22(e)(1) through (23) with sufficient detail and context to enable the reader to understand its approach to controlling the risks and addressing the requirements in each standard; (iii) a summary of material changes since the last update of the disclosure; and (iv) an executive summary of the key points regarding each. Rule 17Ad–22(e)(23)(v) also requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the comprehensive public disclosure required under Rule 17Ad–22(e)(23)(iv) is updated not less than every two years, or more frequently following changes to its system or the environment in which it operates to the extent necessary, to ensure statements previously provided remain accurate in all material respects.

The purpose of this information collection is to ensure that participants and prospective participants in a covered clearing agency are provided with a complete picture of the covered clearing agency's operations and risk management so that they can understand the risks and responsibilities of participation in the covered clearing agency.

24. Rule 17Ad–22(c)(1)

Rule 17Ad–22(c)(1) requires that, each fiscal quarter (based on calculations made as of the last business day of the clearing agency's fiscal quarter) or at any time upon Commission request, a registered clearing agency that performs CCP services shall calculate and maintain a record, in accordance with Rule 17a–1 under the Exchange Act, of the financial and qualifying liquid resources necessary to meet the requirements, as applicable, of Rules 17Ad–22(b)(3), (e)(4), and (e)(7), and sufficient documentation to explain the methodology it uses to compute such financial resources or qualifying liquid resources requirement.

The purpose of the collection of information is to enable the Commission to monitor the financial resources of registered clearing agencies that provide CCP services.

B. Respondents

The requirements in Rule 17Ad–22(e) impose a PRA burden on covered clearing agencies. Under the adopted definition of ''covered clearing agency,'' Rule 17Ad–22(e) applies to five registered clearing agencies, including four registered clearing agencies that provide CCP services and one registered clearing agency that provides CSD and SSS services. In the CCA Standards adopting release, 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 Rule 17Ad–22(e)(6) would only have six respondents because it only applies to CCPs, Rule 17Ad–22(e)(11) would only have one respondent because it only applies to CSDs, and Rule 17Ad–22(e)(14) would only have two respondents because it only applies to security-based swap clearing agencies.

Under the proposed amendment to the definition of ''covered clearing agency'' described above, Rule 17Ad–22(e) would instead apply to six registered clearing agencies, including five registered clearing agencies that provide CCP services and one registered clearing agency that provides CSD and SSS services.[244] The Commission

[242] *See* 17 CFR 240.17Ad–22(e)(21); CCA Standards adopting release, *supra* note 7, at 475.

[243] *See* 17 CFR 240.17Ad–22(e)(22); CCA Standards adopting release, *supra* note 7, at 475.

[244] *See supra* Part III.B and accompanying text. The additional registered clearing agency that provides CCP services and that would be subject to Rule 17Ad–22(e) under the proposed amendment to

Continued

continues to believe that two additional entities might seek to register with the Commission. Accordingly, the Commission preliminarily estimates that, under the proposed amendment to the definition of ''covered clearing agency'' described above, a majority of the requirements under Rule 17Ad–22(e) would have eight respondents, of which (i) seven would be CCPs and one would be a CSD and (ii) two would be security-based swap clearing agencies. The Commission also notes that Rule 17Ad–22(e)(6) would now have seven respondents because it only applies to CCPs, Rule 17Ad–22(e)(11) would continue to only have one respondent because it only applies to CSDs, and Rule 17Ad–22(e)(14) would continue to only have two 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 remaining respondent that would be subject to Rule 17Ad–22(e) under the proposed amendment to the definition of ''covered clearing agency,'' therefore reflecting the incremental annual reporting and recordkeeping burdens resulting from the proposed amendment to the definition of ''covered clearing agency.'' In addition, because the one remaining respondent provides CCP services and does not provide CSD services, the analysis does not include Rule 17Ad–22(e)(11).

C. Total Annual Reporting and Recordkeeping Burdens

As described in the CCA Standards adopting release,[245] the Commission continues to believe that the information collected pursuant to Rule 17Ad–22(e) reflects, to a degree, existing policies and procedures at covered clearing agencies, but in some instances a covered clearing agency will be required to develop new policies and procedures. Thus, when a covered clearing agency reviews and updates its policies and procedures pursuant to Rule 17Ad–22(e), the Commission believes that the PRA burden may vary across the requirements under Rule 17Ad–22(e), depending on the complexity of the requirement in question and the extent to which a covered clearing agency already has policies and procedures consistent with the requirement. As a general matter, the portions of Rule 17Ad–22(e) for which the Commission expects a higher PRA burden are those provisions including requirements not comparable to any existing requirements under Rule 17Ad–22(d). Where the requirements do not reflect existing practices or the normal course of a covered clearing agency's activity, the PRA burden may entail, in addition to ongoing burdens, initial one-time burdens to develop new policies and procedures.

Consistent with the CCA Standards adopting release, the Commission continues to believe that Rules 17Ad–22(e)(1), (8) through (10), (12), (14), (16), and (22) contain requirements either substantially similar to those in Rule 17Ad–22(d) or reflect current practices at covered clearing agencies. The Commission believes that a covered clearing agency may need to make only limited changes to its policies and procedures pursuant to the requirements in these rules. For example, a covered clearing agency may need to conduct a comparison of its existing policies and procedures against each rule to confirm that its policies and procedures are consistent with the requirements therein.

The Commission also continues to believe that Rules 17Ad–22(e)(2), (3), (5), (11), (13), (17), (18), (20), and (21) contain provisions that are similar to those in Rule 17Ad–22(d) but would also impose additional requirements not found in Rule 17Ad–22(d). The Commission believes that a covered clearing agency may need to make changes to update its policies and procedures pursuant to the requirements in these rules. For example, a covered clearing agency may need to review and amend its existing rules, policies, and procedures but may not need to develop, design, or implement new operations or practices pursuant to these rules.

For Rules 17Ad–22(e)(4), (6), (7), (15), (19), and (23), for which no comparable pre-existing requirements under Rule 17Ad–22 have been identified, the Commission continues to believe that a covered clearing agency may need to make more extensive changes to its policies and procedures, may need to implement new policies and procedures, and may need to take other steps pursuant to the requirements in these rules. For example, a covered clearing agency may need to develop, design, and implement new operations and practices. In these cases, the PRA burden is greater since these requirements may not reflect established practices or the normal course of a covered clearing agency's activities. Further, the PRA burden for these rules may entail both initial one-time burdens, such as create new policies and procedures, as well as ongoing burdens, such as requirements to make certain disclosures or perform certain types of review, on a periodic basis.

1. Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) contains substantially similar provisions to Rule 17Ad–22(d)(1).[246] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden would include the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(1),[247] the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of approximately 8 hours to review and revise existing policies and procedures.[248]

Rule 17Ad–22(e)(1) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[249] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(1) would impose an aggregate annual burden on a respondent clearing agency of 3 hours.[250]

2. Rule 17Ad–22(e)(2)

Rule 17Ad–22(e)(2) contains similar provisions to Rule 17Ad–22(d)(8) but also adds additional requirements that do not appear in Rule 17Ad–22(d).[251] The Commission therefore expects that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule and that the PRA burden includes the

the definition of ''covered clearing agency'' is currently a registered clearing agency subject to Rule 17Ad–22(d).

[245] *See* CCA Standards adopting release, *supra* note 7, at 416–418.

[246] *See* 17 CFR 240.17Ad–22(d)(1), (e)(1).

[247] *See* CCA Standards adopting release, *supra* note 7, at 418–419; Clearing Agency Standards adopting release, *supra* note 31, at 66260.

[248] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours)) = 8 hours × 1 respondent clearing agency = 8 hours.

[249] *See* CCA Standards adopting release, *supra* note 7, at 419; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[250] This figure was calculated as follows: (Compliance Attorney for 3 hours) × 1 respondent clearing agency = 3 hours.

[251] *See* 17 CFR 204.17Ad–22(d)(8), (e)(2).

incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(8),[252] the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of approximately 22 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[253]

Rule 17Ad–22(e)(2) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[254] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(2) would impose an aggregate annual burden on a respondent clearing agency of 4 hours.[255]

3. Rule 17Ad–22(e)(3)

While Rule 17Ad–22(d) requires registered clearing agencies to have policies and procedures to manage certain risks,[256] Rule 17Ad–22(e)(3) requires a comprehensive framework for risk management, under which policies and procedures for risk management are designed holistically, are consistent with each other, and work effectively together. Accordingly, the PRA burden requires a respondent clearing agency to revise its written rules, policies, and procedures to include, among other things, periodic review and plans for the recovery and orderly wind-down of the covered clearing agency. As a result, the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of 57 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[257]

Rule 17Ad–22(e)(3) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures created in response to the rule and activities related to facilitating a periodic review of the risk management framework. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[258] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(3) would impose an aggregate annual burden on a respondent clearing agency of 49 hours.[259] The Commission notes that the estimated ongoing burden for Rule 17Ad–22(e)(3) is similar to the initial one-time burden because the rule includes a specific requirement that policies and procedures for comprehensive risk management include review on a specified periodic basis and approval by the board of directors annually.

4. Rule 17Ad–22(e)(4)

The Commission has previously estimated that the PRA burdens for Rule 17Ad–22(e)(4) are more significant than in other cases under Rule 17Ad–22(e) and may require a respondent clearing agency to make substantial changes to its written rules, policies, and procedures pursuant to the rule.[260] In addition, Rule 17Ad–22(e)(4) will require a respondent clearing agency to make one-time systems adjustments so that it has the capability to test the sufficiency of its financial resources and to perform an annual model validation. As a result, the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of 200 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[261]

Rule 17Ad–22(e)(4) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures developed in response to the rule and ongoing activities with respect to testing the sufficiency of its financial resources and performing the annual model validation. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[262] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(4) would impose an aggregate annual burden on a respondent clearing agency of 60 hours.[263]

5. Rule 17Ad–22(e)(5)

Rule 17Ad–22(e)(5) contains similar provisions to Rule 17Ad–22(d)(3).[264] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. For example, a respondent clearing agency may need to develop new policies and procedures for an annual review of the sufficiency of its collateral haircuts and concentration limits. Accordingly, based on the similar policies and procedures requirements in and the Commission's previous corresponding burden estimates for Rule 17Ad–22(d)(3),[265] the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of approximately 42 hours to review and review existing policies and procedures

[252] *See* CCA Standards adopting release, *supra* note 7, at 420; Clearing Agency Standards adopting release, *supra* note 31, at 66260.

[253] This figure was calculated as follows: ((Assistant General Counsel for 24 hours) + (Compliance Attorney for 10 hours)) = 22 hours × 1 respondent clearing agency = 22 hours.

[254] *See* CCA Standards adopting release, *supra* note 7, at 421; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[255] This figure was calculated as follows: (Compliance Attorney for 4 hours) × 1 respondent clearing agency = 4 hours.

[256] *See* 17 CFR 240.17Ad–22(d), (e)(3).

[257] This figure was 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 × 1 respondent clearing agency = 57 hours.

[258] *See* CCA Standards adopting release, *supra* note 7, at 422–423; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[259] This figure was calculated as follows: ((Compliance Attorney for 8 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 5 hours) + (Risk Management Specialist for 33 hours)) = 49 hours × 1 respondent clearing agency = 49 hours.

[260] *See* Clearing Agency Standards adopting release, *supra* note 7, at 423.

[261] This figure was calculated as follows: ((Assistant General Counsel for 60 hours) + (Compliance Attorney for 40 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)) = 200 hours × 1 respondent clearing agency = 200 hours.

[262] *See* CCA Standards adopting release, *supra* note 7, at 424–425; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[263] This figure was calculated as follows: ((Compliance Attorney for 24 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours) + (Risk Management Specialist for 30 hours)) = 60 hours × 1 respondent clearing agency = 60 hours.

[264] *See* 17 CFR 240.17Ad–22(d)(3), (e)(5).

[265] *See* CCA Standards adopting release, *supra* note 7, at 425–426; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

and to create new policies and procedures, as necessary.[266]

Rule 17Ad–22(e)(5) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule and also requires an annual review of collateral haircuts and concentration limits. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[267] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(5) would impose an aggregate annual burden on a respondent clearing agency of 36 hours.[268] The Commission notes that the estimated ongoing burden for Rule 17Ad–22(e)(5) is similar to the initial one-time burden because the rule requires policies and procedures for a not-less-than-annual review of the sufficiency of a covered clearing agency's collateral haircuts and concentration limits.

6. Rule 17Ad–22(e)(6)

The Commission has previously estimated that the PRA burdens for Rule 17Ad–22(e)(6) are more significant than in other cases under Rule 17Ad–22(e) and may require a respondent clearing agency to make substantial changes to its written rules, policies, and procedures pursuant to the rule.[269] For example, Rule 17Ad–22(e)(6) requires one-time systems adjustments to perform daily backtesting and monthly (or more frequent) sensitivity analyses. As a result, the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of 180 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[270]

Rule 17Ad–22(e)(6) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule and activities associated with daily backtesting, monthly (or more frequent) sensitivity analyses, and annual model validation. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[271] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(6) would impose an aggregate annual burden on a respondent clearing agency of 60 hours.[272]

7. Rule 17Ad–22(e)(7)

The Commission estimates that the PRA burdens for Rule 17Ad–22(e)(7) are more significant than in other cases under Rule 17Ad–22(e) and may require a respondent clearing agency to make substantial changes to its written rules, policies, and procedures pursuant to the rule.[273] For example, Rule 17Ad–22(e)(7) requires one-time systems adjustments to test the sufficiency of its liquid resources, test its access to liquidity providers, and perform an annual model validation. As a result, the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of 330 hours to review and revise existing policies and procedures.[274]

Rule 17Ad–22(e)(7) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to policies and procedures created in response to the rule as well as activities related to testing the sufficiency of its liquidity resources, testing access to its liquidity providers, and performing an annual model validation. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[275] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(7) would impose an aggregate annual burden on a respondent clearing agency of 128 hours.[276]

8. Rule 17Ad–22(e)(8)

Rule 17Ad–22(e)(8) contains substantially similar provisions to Rule 17Ad–22(d)(12).[277] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(12),[278] the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of approximately 12 hours to review and revise existing policies and procedures.[279]

Rule 17Ad–22(e)(8) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[280] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(8) would impose an aggregate annual burden on

[266] This figure was 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 × 1 respondent clearing agency = 42 hours.

[267] *See* CCA Standards adopting release, *supra* note 7, at 426; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[268] This figure was calculated as follows: ((Compliance Attorney for 6 hours) + (Risk Management Specialist for 30 hours)) = 36 hours × 1 respondent clearing agency = 36 hours.

[269] *See* CCA Standards adopting release, *supra* note 7, at 427.

[270] This figure was 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 × 1 respondent clearing agency = 180 hours.

[271] *See* CCA Standards adopting release, *supra* note 7, at 427–428; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[272] This figure was calculated as follows: ((Compliance Attorney for 24 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours) + (Risk Management Specialist for 30 hours)) = 60 hours × 1 respondent clearing agency = 60 hours.

[273] *See* CCA Standards adopting release, *supra* note 7, at 428.

[274] This figure was 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 × 1 respondent clearing agency = 330 hours.

[275] *See* CCA Standards adopting release, *supra* note 7, at 429; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[276] This figure was calculated as follows: ((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 × 1 respondent clearing agency = 128 hours.

[277] *See* 17 CFR 240.17Ad–22(d)(12), (e)(8).

[278] *See* Clearing Agency Standards adopting release, *supra* note 31, at 66260.

[279] This figure was 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 × 1 respondent clearing agency = 12 hours.

[280] *See* CCA Standards adopting release, *supra* note 7, at 429–430; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

a respondent clearing agency of approximately 5 hours.[281]

9. Rule 17Ad–22(e)(9)

Rule 17Ad–22(e)(9) contains substantially similar provisions to Rule 17Ad–22(d)(5).[282] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(5),[283] the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of approximately 12 hours to review and revise existing policies and procedures.[284]

Rule 17Ad–22(e)(9) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[285] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(9) would impose an aggregate annual burden on a respondent clearing agency of approximately 5 hours.[286]

10. Rule 17Ad–22(e)(10)

Rule 17Ad–22(e)(10) contains substantially similar provisions to Rule 17Ad–22(d)(15).[287] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(15),[288] the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of approximately 12 hours to review and revise existing policies and procedures.[289]

Rule 17Ad–22(e)(10) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[290] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(10) would impose an aggregate annual burden on a respondent clearing agency of approximately 5 hours.[291]

11. Rule 17Ad–22(e)(12)

Rule 17Ad–22(e)(12) contains substantially similar provisions to Rule 17Ad–22(d)(13).[292] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(13),[293] the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of approximately 12 hours to review and revise existing policies and procedures.[294]

Rule 17Ad–22(e)(12) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[295] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(12) would impose an aggregate annual burden on a respondent clearing agency of approximately 5 hours.[296]

12. Rule 17Ad–22(e)(13)

Rule 17Ad–22(e)(13) requires a respondent clearing agency to have written policies and procedures reasonably designed to address participant default and ensure that the clearing agency can contain losses and liquidity demands and continue to meet its obligations. Rule 17Ad–22(e)(13) contains similar provisions to Rule 17Ad–22(d)(11) but also imposes additional requirements that do not appear in Rule 17Ad–22.[297] The Commission therefore expects that a respondent clearing agency may have written rules, policies, and procedures similar to some requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising existing policies and procedures pursuant to Rule 17Ad–22(e)(13) and creating new policies and procedures, as necessary. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(11),[298] the Commission preliminarily believes that a respondent clearing agency would incur an aggregate one-time burden of approximately 60 hours to review and revise existing policies and procedures

[281] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 1 respondent clearing agency = 5 hours.

[282] *See* 17 CFR 240.17Ad–22(d)(5), (e)(9).

[283] *See* CCA Standards adopting release, *supra* note 7, at 431; Clearing Agency Standards adopting release, *supra* note 31, at 66260.

[284] This figure was 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 × 1 respondent clearing agency = 12 hours.

[285] *See* CCA Standards adopting release, *supra* note 7, at 431; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[286] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 1 respondent clearing agency = 5 hours.

[287] *See* 17 CFR 240.17Ad–22(d)(15), (e)(10).

[288] *See* CCA Standards adopting release, *supra* note 7, at 432; Clearing Agency Standards adopting release, *supra* note 31, at 66260.

[289] This figure was 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 × 1 respondent clearing agency = 12 hours.

[290] *See* CCA Standards adopting release, *supra* note 7, at 432–433; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[291] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 1 respondent clearing agency = 5 hours.

[292] *See* 17 CFR 240.17Ad–22(d)(13), (e)(12).

[293] *See* CCA Standards adopting release, *supra* note 7, at 434–435; Clearing Agency Standards adopting release, *supra* note 31, at 66260.

[294] This figure was 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 × 1 respondent clearing agency = 12 hours.

[295] *See* CCA Standards adopting release, *supra* note 7, at 435; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[296] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 1 respondent clearing agency = 5 hours.

[297] *See* 17 CFT 240.17Ad–22(d)(11), (e)(13).

[298] *See* CCA Standards adopting release, *supra* note 7, at 436–437; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

and to create new policies and procedures, as necessary.[299]

Rule 17Ad–22(e)(13) also imposes ongoing burdens on a respondent clearing agency. The rule requires policies and procedures for the annual review and testing of a clearing agency's default policies and procedures. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[300] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(13) would impose an aggregate annual burden on a respondent clearing agency of approximately 9 hours.[301]

13. Rule 17Ad–22(e)(14)

With respect to Rule 17Ad–22(e)(14), a respondent clearing agency is a registered clearing agency that provides CCP services for security-based swaps. Such clearing agencies generally have written policies and procedures regarding the segregation and portability of customer positions and collateral as a result of applicable rules and regulations notwithstanding Rule 17Ad–22.[302] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, the Commission estimates that Rule 17Ad–22(e)(14) imposes on respondent clearing agencies an aggregate one-time burden of 36 hours to review and revise existing policies and procedures.[303]

Rule 17Ad–22(e)(14) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[304] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(14) would impose an aggregate annual burden on a respondent clearing agency of approximately 6 hours.[305]

14. Rule 17Ad–22(e)(15)

Because Rule 17Ad–22(d) does not include requirements related to general business risk, the Commission estimates that the PRA burdens for Rule 17Ad–22(e)(15) are more significant than in other cases under Rule 17Ad–22(e) and may require a respondent clearing agency to make substantial changes to its written rules, policies, and procedures pursuant to the rule.[306] The Commission preliminarily estimates that Rule 17Ad–22(e)(15) would impose an aggregate one-time burden on a respondent clearing agency of 210 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[307]

Rule 17Ad–22(e)(15) also imposes ongoing burdens on a respondent clearing agency. Rule 17Ad–22(e)(15) requires a respondent clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a viable plan, approved by its board of directors and updated at least annually, for raising additional equity in the event that the covered clearing agency's liquid net assets fall below the level required by the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[308] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(15) would impose an aggregate annual burden on a respondent clearing agency of 48 hours.[309]

15. Rule 17Ad–22(e)(16)

Rule 17Ad–22(e)(16) contains substantially similar provisions to Rule 17Ad–22(d)(3).[310] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(3),[311] the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of approximately 20 hours to review and revise existing policies and procedures.[312]

Rule 17Ad–22(e)(16) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[313] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(16) would impose an aggregate annual burden on a respondent clearing agency of 6 hours.[314]

16. Rule 17Ad–22(e)(17)

Rule 17Ad–22(e)(17) contains similar provisions to Rule 17Ad–22(d)(4) but also imposes additional requirements that do not appear in Rule 17Ad–22.[315] The Commission therefore expects that a respondent clearing agency may have written rules, policies, and procedures

[299] This figure was calculated as follows: ((Assistant General Counsel for 20 hours) + (Compliance Attorney for 16 hours) + (Senior Business Analyst for 12 hours) + (Computer Operations Manager for 12 hours)) = 60 hours × 1 respondent clearing agency = 60 hours.

[300] *See* CCA Standards adopting release, *supra* note 7, at 437; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[301] This figure was calculated as follows: (Compliance Attorney for 9 hours) × 1 respondent clearing agency = 9 hours.

[302] *See, e.g.,* 77 FR 6336 (Feb. 7, 2012) (CFTC adopting rules imposing LSOC on DCOs for cleared swaps). Because the respondent clearing agency is subject to the CFTC's segregation and portability requirements for cleared swaps, the Commission has previously expected that the burden imposed by Rule 17Ad–22(e)(14) will be limited. *See* CCA Standards adopting release, *supra* note 7, at 438.

[303] This figure was 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 × 1 respondent clearing agency that provides CCP services = 36 hours.

[304] *See* CCA Standards adopting release, *supra* note 7, at 438–439; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[305] This figure was calculated as follows: (Compliance Attorney for 6 hours) × 1 respondent clearing agency = 6 hours.

[306] *See* 17 CFR 240.17Ad–22(d), (e)(15).

[307] This figure was 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 × 1 respondent clearing agency = 210 hours.

[308] *See* CCA Standards adopting release, *supra* note 7, at 439–440; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[309] This figure was calculated as follows: ((Compliance Attorney for 42 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours)) = 48 hours × 1 respondent clearing agency = 48 hours.

[310] *See* 17 CFR 240.17Ad–22(d)(3), (e)(16).

[311] *See* CCA Standards adopting release, *supra* note 7, at 440; Clearing Agency Standards adopting release, *supra* note 31, at 66260.

[312] This figure was 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 × 1 respondent clearing agency = 20 hours.

[313] *See* CCA Standards adopting release, *supra* note 7, at 441; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[314] This figure was calculated as follows: (Compliance Attorney for 6 hours) × 1 respondent clearing agency = 6 hours.

[315] *See* 17 CFR 240.17Ad–22(d)(4), (e)(17).

similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(4),[316] the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of 28 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[317]

Rule 17Ad–22(e)(17) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[318] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(17) would impose an aggregate annual burden on a respondent clearing agency of 6 hours.[319]

17. Rule 17Ad–22(e)(18)

Rule 17Ad–22(e)(18) contains similar provisions to Rules 17Ad–22(b)(5) through (7) and (d)(2).[320] The Commission therefore expects that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rules 17Ad–22(b)(5) through (7) and (d)(2),[321] the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of 44 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[322]

Rule 17Ad–22(e)(18) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[323] the Commission preliminarily estimates that the ongoing activities required by the rule would impose an aggregate annual burden on a respondent clearing agency of 7 hours.[324]

18. Rule 17Ad–22(e)(19)

Tiered participation arrangements are not addressed by Rule 17Ad–22(d). The Commission therefore expects that a respondent clearing agency may need to create policies and procedures pursuant to Rule 17Ad–22(e)(19).[325] The Commission estimates that Rule 17Ad–22(e)(19) imposes an aggregate one-time burden on respondent clearing agencies of 44 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[326]

Rule 17Ad–22(e)(19) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[327] the Commission preliminarily estimates that the ongoing activities required by the rule would impose an annual aggregate burden on a respondent clearing agency of 7 hours.[328]

19. Rule 17Ad–22(e)(20)

Rule 17Ad–22(e)(20) contains similar provisions to Rule 17Ad–22(d)(7) but also adds additional requirements that do not appear in Rule 17Ad–22(d).[329] The Commission therefore expects that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, based on the similar policies and procedures requirements and compliance burdens associated with Rule 17Ad–22(d)(7),[330] the Commission preliminarily believes that a respondent clearing agency would incur an aggregate one-time burden of approximately 44 hours to review and revise existing policies and procedures.[331]

Rule 17Ad–22(e)(20) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[332] the Commission preliminarily estimates that the ongoing activities required by the rule would impose an aggregate annual burden on a respondent clearing agency of 7 hours.[333]

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[316] *See* CCA Standards adopting release, *supra* note 7, at 442; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[317] This figure was 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 × 1 respondent clearing agency = 28 hours.

[318] *See* CCA Standards adopting release, *supra* note 7, at 442; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[319] This figure was calculated as follows: (Compliance Attorney for 6 hours) × 1 respondent clearing agency = 6 hours.

[320] *See* 17 CFR 240.17Ad–22(b)(5)–(7), (d)(2), (e)(18).

[321] *See* CCA Standards adopting release, *supra* note 7, at 443; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[322] This figure was 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 × 1 respondent clearing agency = 44 hours.

[323] *See* CCA Standards adopting release, *supra* note 7, at 443–444; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[324] This figure was calculated as follows: (Compliance Attorney for 7 hours) × 1 respondent clearing agency = 7 hours.

[325] *See* 17 CFR 240.17Ad–22(d), (e)(19).

[326] This figure was 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 × 1 respondent clearing agency = 44 hours.

[327] *See* CCA Standards adopting release, *supra* note 7, at 444–445; Clearing Agency Standards adopting release, *supra* note 31, at 66260.

[328] This figure was calculated as follows: (Compliance Attorney for 7 hours) × 1 respondent clearing agency = 7 hours.

[329] *See*17 CFR 240.17Ad–22(d)(7), (e)(20).

[330] *See* CCA Standards adopting release, *supra* note 7, at 445; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[331] This figure was calculated as follows: ((Assistant General Counsel for 10 hours) + (Compliance Attorney for 7 hours) + (Senior Business Analyst for 5 hours) + (Computer Operations Manager for 15 hours) + (Chief Compliance Officer for 5 hours) + (Senior Programmer for 2 hours) = 44 hours × 1 respondent clearing agency = 44 hours.

[332] *See* CCA Standards adopting release, *supra* note 7, at 446; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[333] This figure was calculated as follows: (Compliance Attorney for 7 hours) × 1 respondent clearing agency = 7 hours.

20. Rule 17Ad–22(e)(21)

Rule 17Ad–22(e)(21) contains similar provisions to Rule 17Ad–22(d)(6) but also adds additional requirements that do not appear in Rule 17Ad–22(d).[334] The Commission therefore expects that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(6),[335] the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of approximately 32 hours to review and revise existing policies and procedures.[336]

Rule 17Ad–22(e)(21) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[337] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(21) would impose an aggregate annual burden on a respondent clearing agency of 11 hours.[338]

21. Rule 17Ad–22(e)(22)

Although Rule 17Ad–22(d) does not include any requirements with provisions similar to Rule 17Ad–22(e)(22), the Commission understands that covered clearing agencies currently use the relevant internationally accepted communication procedures and standards and therefore expects that a respondent clearing agency may need to make only limited changes to its policies and procedures under the rule.[339] Accordingly, the Commission preliminarily estimates that Rule 17Ad–22(e)(22) would impose an aggregate one-time burden on a respondent clearing agency of 24 hours to review and revise existing policies and procedures.[340]

Rule 17Ad–22(e)(22) also imposes ongoing burdens on a respondent clearing agency. It requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[341] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(22) would impose an aggregate annual burden on a respondent clearing agency of 5 hours.[342]

22. Rule 17Ad–22(e)(23)

Rule 17Ad–22(e)(23) contains similar requirements to Rule 17Ad–22(d)(9) but also imposes substantial new requirements.[343] The Commission therefore expects that, although a respondent clearing agency may have written rules, policies and procedures similar to those required by some provisions under the rule, a respondent clearing agency will need to create new policies and procedures to address the other provisions. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(9),[344] the Commission preliminarily estimates that a respondent clearing agency would incur an aggregate one-time burden of 138 hours to review and revise existing policies and procedures and to create policies and procedures, as necessary.[345]

Rule 17Ad–22(e)(23) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[346] the Commission preliminarily estimates that the ongoing activities required by Rule 17Ad–22(e)(23) would impose an aggregate annual burden on a respondent clearing agency of 34 hours.[347]

23. Total Burden for Rule 17Ad–22(e)

The Commission preliminarily estimates that the aggregate initial burden for a new respondent clearing agency under Rule 17Ad–22(e) would be 1,567 hours. The aggregate ongoing burden for a new respondent clearing agency under Rule 17Ad–22(e) would be 502 hours. Further, the Commission preliminarily estimates that, under Rule 17Ad–22(e) and the proposed amendment to the definition of ''covered clearing agency,'' all respondent clearing agencies would incur an aggregate initial burden of 12,343 hours under Rule 17Ad–22(e) and an aggregate ongoing burden of 4,039 hours.

24. Total Burden for Rule 17Ad–22(c)(1)

With respect to Rule 17Ad–22(c)(1), a respondent clearing agency is a registered clearing agency that provides CCP services. In the CCA Standards adopting release the Commission estimated that respondent clearing agencies would incur both initial and ongoing burdens under Rule 17Ad–22(c)(1). Specifically, the Commission estimated that Rule 17Ad–22(c)(1) would impose on a respondent clearing agency a one-time burden of 110 hours.[348] The Commission preliminarily believes that this estimate remains correct and that a respondent clearing agency would incur an aggregate one-time burden of 110 hours to perform adjustments needed to synthesize and

[334] *See* 17 CFR 240.17Ad–22(d)(6), (e)(21).

[335] *See* CCA Standards adopting release, *supra* note 7, at 447; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[336] This figure was calculated as follows: ((Assistant General Counsel for 10 hours) + (Compliance Attorney for 7 hours) + (Senior Business Analyst for 5 hours) + (Computer Operations Manager for 10 hours)) = 32 hours × 1 respondent clearing agency = 32 hours.

[337] *See* CCA Standards adopting release, *supra* note 7, at 447; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[338] This figure was calculated as follows: ((Compliance Attorney for 5 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours) = 11 hours × 1 respondent clearing agency = 11 hours.

[339] *See* 17 CFR 240.17Ad–22(d), (e)(22).

[340] This figure was 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 × 1 respondent clearing agency = 24 hours.

[341] *See* CCA Standards adopting release, *supra* note 7, at 448; Clearing Agency Standards adopting release, *supra* note 31, at 66260.

[342] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 1 respondent clearing agency = 5 hours.

[343] *See* 17 CFR 240.17Ad–22(d)(9), (e)(23).

[344] *See* CCA Standards adopting release, *supra* note 7, at 449; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[345] This figure was 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 × 1 respondent clearing agency = 138 hours.

[346] *See* CCA Standards adopting release, *supra* note 7, at 449–450; Clearing Agency Standards adopting release, *supra* note 31, at 66260–63.

[347] This figure was calculated as follows: (Compliance Attorney for 34 hours) × 1 respondent clearing agency = 34 hours.

[348] *See* CCA Standards adopting release, *supra* note 7, at 452–453. This figure was calculated as follows: ((Chief Compliance Officer at 44 hours) + (Computer Operations Department Manager at 44 hours) + (Senior Programmer at 22 hours)) = 110 hours.

format existing information in a manner sufficient to explain the methodology used to meet the requirements of Rule 17Ad–22(c)(1).[349]

In addition, the Commission estimated that Rule 17Ad–22(c)(1) would impose ongoing burdens on a respondent clearing agency of three hours per respondent clearing agency.[350] The Commission preliminarily believes that this estimate remains correct and that the ongoing activities required by Rule 17Ad–22(c)(1) would impose an aggregate annual burden on respondent clearing agencies of 120 hours to perform adjustments needed to synthesize and format existing information in a manner sufficient to explain the methodology used to meet the requirements of the rule.[351]

D. Collection of Information Is Mandatory

The collection of information requirements for Rule 17Ad–22(c)(1) and (e) are mandatory.

E. Confidentiality

The Commission preliminarily expects that the policies and procedures developed pursuant to Rule 17Ad–22(e) would be communicated to the participants, as applicable, of each respondent clearing agency and, as applicable, the public. A respondent clearing agency would be required to preserve such policies and procedures in accordance with, and for the periods specified in, Rules 17a–1 and 17a–4(e)(7) under the Exchange Act.[352] 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.[353]

F. Request for Comments

The Commission invites comments on all of the above estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission requests comment in order to (a) evaluate whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (b) evaluate the accuracy of our estimates of the burden of the collection of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (d) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (e) determine whether there are cost savings associated with the collection of information that have not been identified in this proposal.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File Number S7–23–16. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number S7–23–16, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it by November 14, 2016.

V. Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996, a rule is considered ''major'' where, if adopted, it results or is likely to result in (i) an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effect on competition, investment, or innovation.[354] The Commission requests comment on the potential impact of the proposed amendments to Rule 17Ad–22 on the economy on an annual basis, any potential increase in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. 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.[355] Section 603(a) of the Administrative Procedure Act,[356] 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.'' [357] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant impact on a substantial number of small entities.[358]

A. Registered Clearing Agencies

The proposed amendments to Rule 17Ad–22 would apply to registered clearing agencies that are CCPs, CSDs, or SSSs. 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.[359]

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[349] This figure was calculated as follows: ((Chief Compliance Officer at 44 hours) + (Computer Operations Department Manager at 44 hours) + (Senior Programmer at 22 hours)) = 110 hours × 1 respondent clearing agency = 110 hours.

[350] This figure was calculated as follows: ((Compliance Attorney at 1 hour) + (Computer Operations Department Manager at 2 hours)) = 3 hours per quarter × 4 quarters per year = 12 hours.

[351] This figure was calculated as follows: ((Compliance Attorney at 2 hours) + (Computer Operations Department Manager at 3 hours)) = 5 hours per quarter × 4 quarters per year = 20 hours × 1 respondent clearing agency = 20 hours.

[352] *See* 17 CFR 240.17a–1 and 17a–4(e)(7).

[353] *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).

[354] Public Law 104–121, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[355] *See* 5 U.S.C. 601 *et seq.*

[356] 5 U.S.C. 603(a).

[357] 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 proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10.

[358] *See* 5 U.S.C. 605(b).

[359] *See* 17 CFR 240.0–10(d).

Based on the Commission's existing information about the clearing agencies currently registered with the Commission,[360] the Commission preliminarily 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 preliminarily does not believe that any such entities would be ''small entities'' as defined in Exchange Act Rule 0–10.[361] Accordingly, the Commission preliminarily believes that any such registered clearing agencies will exceed the thresholds for ''small entities'' set forth in Exchange Act Rule 0–10.

B. Certification

For the reasons described above, the Commission certifies that the proposed amendments to Rule 17Ad–22 would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission requests comment regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities, including clearing agencies and counterparties to security and security-based swap transactions, and provide empirical data to support the extent of the impact.

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 proposes to amend Rule 17Ad–22.

[360] In 2015, DTCC processed $1.508 quadrillion in financial transactions. Within DTCC, DTC settled $112.3 trillion of securities and held securities valued at $45.4 trillion, NSCC processed an average daily value of $976.6 billion in equity securities, and FICC cleared $917.1 trillion of transactions in government securities and $48.2 trillion of transactions in agency mortgage-backed securities. *See* DTCC, 2015 Annual Report, *available at http://www.dtcc.com/annuals/2015/index.php.* OCC cleared more than 4.1 billion contracts and held margin of $98.3 billion at the end of 2015. *See* OCC, 2015 Annual Report, *available at http://www.theocc.com/components/docs/about/annual-reports/occ-2015-annual-report.pdf.* In addition, Intercontinental Exchange (''ICE'') averaged daily trade volume of 9.3 million and revenues of $3.3 billion in 2015. *See* ICE at a glance, *available at https://www.theice.com/publicdocs/ICE_at_a_glance.pdf.*

[361] *See* 17 CFR 240.0–10(d). The Commission based this determination on its review of public sources of financial information about registered clearing agencies.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendment

In accordance with the foregoing, 17 CFR part 240, as amended elsewhere in this issue of the **Federal Register**, is proposed to be further amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE

■ 1. The general 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, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 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.*

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■ 2. Amend § 240.17Ad–22 by revising paragraphs (a)(3), (5), (15), (16), (17), (18) and (19), and adding paragraph (a)(20) 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, central securities depository, or securities settlement system.

* * * * *

(15) *Securities settlement system* means a clearing agency that enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules.

(16) *Security-based swap* means a security-based swap as defined in section 3(a)(68) of the Act (15 U.S.C. 78c(a)(68)).

(17) *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.

(18) *Stress testing* means the estimation of credit or liquidity exposures that would result from the realization of potential stress scenarios, such as extreme price changes, multiple defaults, or changes in other valuation inputs and assumptions.

(19) *Systemically important in multiple jurisdictions* means, with respect to a covered clearing agency, a covered clearing agency that has been determined by the Commission to be systemically important in more than one jurisdiction pursuant to § 240.17Ab2–2.

(20) *Transparent* means, for the purposes of paragraphs (e)(1), (2), and (10) of this section, to the extent consistent with other statutory and Commission requirements on confidentiality and disclosure, that documentation required under paragraphs (e)(1), (2), and (10) is disclosed to the Commission and, as appropriate, to other relevant authorities, to clearing members and to customers of clearing members, to the owners of the covered clearing agency, and to the public.

By the Commission.

Dated: September 28, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23892 Filed 10–12–16; 8:45 am]

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Part III

Securities and Exchange Commission

17 CFR Part 240
Standards for Covered Clearing Agencies; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–78961; File No. S7–03–14]

RIN 3235–AL48

Standards for Covered Clearing Agencies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting amendments to Rule 17Ad–22 and adding new Rule 17Ab2–2 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''). Among other things, the rules establish enhanced standards for the operation and governance of those clearing agencies registered with the Commission (''registered clearing agencies'') that meet the definition of ''covered clearing agency.''

DATES: *Effective date:* December 12, 2016.

Compliance date: April 11, 2017.

The compliance date is discussed in Part II.G below.

FOR FURTHER INFORMATION CONTACT: Jeffrey Mooney, Assistant Director; Stephanie Park, Senior Special Counsel; Matthew Lee, Branch Chief; Elizabeth Fitzgerald, Branch Chief; or DeCarlo McLaren, Attorney-Adviser; Office of Market Infrastructure, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010, at (202) 551–5710.

SUPPLEMENTARY INFORMATION: The Commission is amending Rule 17Ad–22 by adding new Rule 17Ad–22(e) to establish requirements for the operation and governance of registered clearing agencies that meet the definition of a ''covered clearing agency.'' A covered clearing agency includes a registered clearing agency that (i) has been designated as systemically important by the Financial Stability Oversight Council (''FSOC'') and for which the Commission is the supervisory agency under the Clearing Supervision Act (''designated clearing agency''), or (ii) provides central counterparty (''CCP'') services for security-based swaps or is involved in activities the Commission determines to have a more complex risk profile (''complex risk profile clearing agency''), unless the Commodity Futures Trading Commission (''CFTC'') is the supervisory agency under the Clearing Supervision Act.

To facilitate the addition of new Rule 17Ad–22(e), the Commission is amending existing Rule 17Ad–22(d) to limit its application to clearing agencies other than covered clearing agencies and revising Rule 17Ad–22(a) to add 14 new definitions. The Commission is also adopting new Rule 17Ad–22(f) to codify the Commission's statutory authority under Section 807(c) of the Clearing Supervision Act and new Rule 17Ab2–2 to establish procedures for making determinations regarding covered clearing agencies in certain defined circumstances, described further below.

In developing these rules, Commission staff has consulted with the FSOC, CFTC, and Board of Governors of the Federal Reserve System (''FRB''). The Commission has also considered the relevant international standards as required by Section 805(a)(2)(A) of the Clearing Supervision Act.[1] The relevant international standards for designated clearing agencies and complex risk profile clearing agencies are the *Principles for Financial Market Infrastructures* (''PFMI'').[2]

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[1] *See* 12 U.S.C. 5464(a)(2)(A).

[2] *See* Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions (''CPSS–IOSCO''), Principles for financial market infrastructures (Apr. 16, 2012), *available at http://www.bis.org/publ/cpss101a.pdf.* In 2014, the CPSS became the Committee on Payments and Market Infrastructures (''CPMI'').

I. Introduction

A. Regulatory Framework

Below is an overview of the regulatory requirements for registered clearing agencies that relate to the amendments to Rule 17Ad–22 and new Rule 17Ab2–2 as set forth under the Exchange Act, the Dodd-Frank Act, and Commission rules and regulations thereunder.

1. Exchange Act

Section 17A of the Exchange Act directs the Commission to facilitate the establishment of (i) a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) linked or coordinated facilities for clearance and settlement of securities transactions.[3] In facilitating the establishment of the national clearance and settlement system, the Commission must 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.[4]

As discussed in the Standards for Covered Clearing Agencies proposing release (''CCA Standards proposing release''),[5] clearing agencies are broadly defined in the Exchange Act and undertake a variety of functions.[6] Under Section 17A and Rule 17Ab2–1,[7] an entity that meets the definition of a clearing agency is required to register with the Commission or obtain from the Commission an exemption from registration prior to performing the functions of a clearing agency. To grant registration to a clearing agency, the Exchange Act requires the Commission to determine that the rules and operations of the applicant clearing agency meet the standards set forth in Section 17A.[8] Specifically, Section 17A(b)(3) provides that a clearing agency shall not be registered unless the Commission determines that the clearing agency's rules are consistent with the Exchange Act. In so doing, the Commission must determine that, among other things, (i) the clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and to safeguard securities or funds in its custody or control, (ii) the rules of the clearing agency assure a fair representation of its members and participants in the selection of its directors and administration of its affairs, (iii) the rules of the clearing agency provide for the equitable allocation of reasonable dues and fees, and (iv) the rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions.[9]

Following registration, the Commission supervises registered clearing agencies using various tools. One of these tools is Rule 17a–1 under the Exchange Act, which requires every registered clearing agency to keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity for a period not less than five years and, upon request of any representative of the Commission, to promptly furnish to the possession of such representative copies of any such documents required to be kept.[10] Another of these tools is the rule filing process for self-regulatory organizations (''SROs''),[11] set forth in Section 19(b) of the Exchange Act and rules and regulations thereunder. A registered clearing agency is required to file with the Commission any proposed rule or proposed change in, addition to, or deletion from the registered clearing agency's rules.[12] The Commission publishes all proposed rule changes for comment and reviews them. Proposed rule changes are generally required to be approved by the Commission prior to going into effect; however, certain types of proposed rule changes take effect upon filing with the Commission.[13] When reviewing a proposed rule change, the Commission considers the submissions of the clearing agency together with any comments received on the proposed rule change in making a determination of whether the proposed rule change is consistent with the requirements of the Exchange Act. In

[3] *See* 15 U.S.C. 78q–1(a)(2); *see also* Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94–75, at 4 (1975) (urging that ''[t]he Committee believes the banking and security industries must move quickly toward the establishment of a fully integrated national system for the prompt and accurate processing and settlement of securities transactions'').

[4] *See* 15 U.S.C. 78q–1(a)(2)(A).

[5] *See* Exchange Act Release No. 34–71699 (Mar. 12, 2014), 79 FR 16865 (Mar. 26, 2014), *corrected at* 79 FR 29507, 29510–11 (May 22, 2014); *see also* Exchange Act Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219, 66221–22 (Nov. 2, 2012) (discussing the same) (''Clearing Agency Standards adopting release'').

[6] *See* 15 U.S.C. 78c(a)(23)(A) (providing the definition of ''clearing agency'').

[7] *See* 17 CFR 240.17Ab2–1.

[8] *See* 15 U.S.C. 78q–1(b)(3)(A) through(I) (identifying nine determinations that the Commission must make regarding the rules and structure of a clearing agency to grant registration). In 1980, the Commission published a statement of the views and positions of Commission staff regarding the requirements of Section 17A. *See* Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

[9] *See* 15 U.S.C. 78q–1(b)(3)(A), (C), (D), (F).

[10] *See* 17 CFR 240.17a–1(a) through (c); *see also* 15 U.S.C. 78q(a)(1), (2).

[11] Upon registration, registered clearing agencies are SROs under Section 3(a)(26) of the Exchange Act. *See* 15 U.S.C. 78c(a)(26).

[12] An SRO must submit proposed rule changes to the Commission for review and approval pursuant to Rule 19b–4 under the Exchange Act. A stated policy, practice, or interpretation of an SRO, such as its written policies and procedures, would generally be deemed to be a proposed rule change. *See* 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4.

[13] *See* 15 U.S.C. 78s(b)(3)(A) (setting forth the types of proposed rule changes that take effect upon filing with the Commission). The Commission may temporarily suspend those rule changes within 60 days of filing and institute proceedings to determine whether to approve or disapprove the rule changes. *See* 15 U.S.C. 78s(b)(3)(C).

addition, Section 17A of the Exchange Act further provides the Commission with authority to adopt rules as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act and prohibits a clearing agency from engaging in any activity in contravention of such rules and regulations.[14]

In addition, Commission staff conducts examinations of registered clearing agencies to assess, among other things, existing and emerging risks, compliance with applicable statutory and regulatory requirements, and a clearing agency's oversight of compliance by its participants with its rules. Section 21(a) of the Exchange Act provides the Commission with authority to initiate and conduct investigations to determine if there have been violations of the federal securities laws.[15] Section 19(h) of the Exchange Act also provides the Commission with authority to institute civil actions seeking injunctive and other equitable remedies and/or administrative proceedings arising out of such investigations.[16]

2. Dodd-Frank Act

Title VII of the Dodd-Frank Act provides the Commission with authority to regulate certain over-the-counter (''OTC'') derivatives. Specifically, Title VII added provisions to the Exchange Act that (i) require entities performing the functions of a clearing agency with respect to security-based swaps (''security-based swap clearing agencies'') to register with the Commission, and (ii) direct the Commission to adopt rules with respect to security-based swap clearing agencies.[17]

The Clearing Supervision Act, enacted in Title VIII of the Dodd-Frank Act, provides for the enhanced regulation of certain financial market utilities (''FMUs'').[18] FMUs include clearing agencies that manage or operate a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the FMU.[19] FSOC has designated certain FMUs as systemically important or likely to become systemically important (''SIFMUs'').[20] SIFMUs are required to file 60-days advance notice of changes to rules, procedures, and operations that could materially affect the nature or level of risk presented by the SIFMU (''advance notice'').[21] The Clearing Supervision Act authorizes the Commission to object to changes proposed in such an advance notice, which would prevent the clearing agency from implementing the change.[22] The Clearing Supervision Act also provides for enhanced coordination between the Commission and FRB by allowing for regular on-site examinations and information sharing.[23] The Clearing Supervision Act further provides that the Commission and CFTC shall coordinate with the FRB to jointly develop risk management supervision programs for SIFMUs.[24] In addition, the Clearing Supervision Act provides that the Commission and CFTC may each prescribe risk management standards governing the operations related to payment, clearing, and settlement activities (''PCS activities'') of SIFMUs for which each is the supervisory agency, in consultation with the FSOC and FRB and taking into consideration relevant international standards and existing prudential requirements.[25]

3. Rule 17Ad–22

In 2012, the Commission adopted Rule 17Ad–22 under the Exchange Act to strengthen the substantive regulation of registered clearing agencies, promote the safe and reliable operation of registered clearing agencies, and improve efficiency, transparency, and access to registered clearing agencies.[26] At that time, the Commission noted that the implementation of Rule 17Ad–22 would be an important first step in developing the regulatory changes contemplated by Titles VII and VIII of the Dodd-Frank Act.[27] In this regard, Rule 17Ad–22(b) established certain requirements for clearing agencies that provide CCP services, and Rule 17Ad–22(d) established requirements for the operation and governance of all registered clearing agencies.[28]

The requirements in Rule 17Ad–22 help guide Commission determinations, when considering an application to register as a clearing agency, that the rules and operations of the applicant clearing agency satisfy the requirements in Section 17A of the Exchange Act.[29] Today's amendments to Rule 17Ad–22 build on the existing framework for registered clearing agencies by establishing new requirements for designated clearing agencies, complex risk profile clearing agencies unless the

[14] *See* 15 U.S.C. 78q–1(d).

[15] *See* 15 U.S.C. 78u(a).

[16] *See* 15 U.S.C. 78s(h).

[17] *See* 15 U.S.C. 78q–1(i), (j); Dodd-Frank Act, Sec. 763(b), 124 Stat. at 1768–69 (adding paragraphs (i) and (j) to Section 17A of the Exchange Act).

[18] The objectives and principles for the risk management standards prescribed under the Clearing Supervision Act shall be to (i) promote robust risk management; (ii) promote safety and soundness; (iii) reduce systemic risks; and (iv) support the stability of the broader financial system. Further, the Clearing Supervision Act states that the standards may address areas such as risk management policies and procedures; margin and collateral requirements; participant or counterparty default policies and procedures; the ability to complete timely clearing and settlement of financial transactions; capital and financial resources requirements for designated FMUs; and other areas that are necessary to achieve the objectives and principles described above. *See* 12 U.S.C. 5464(b), (c).

[19] *See* 12 U.S.C. 5462(6). The definition of ''financial market utility'' in Section 803(6) of the Clearing Supervision Act contains a number of exclusions that include, but are not limited to, certain designated contract markets, registered futures associations, swap data repositories, swap execution facilities, national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, security-based swap execution facilities, brokers, dealers, transfer agents, investment companies, and futures commission merchants. *See* 12 U.S.C. 5462(6)(B).

[20] *See* 12 U.S.C. 5463. An FMU is systemically important if the failure of or a disruption to the functioning of such FMU could create or increase the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system. *See* 12 U.S.C. 5462(9). On July 18, 2012, the FSOC designated as systemically important the following then-registered clearing agencies: CME Group (''CME''), The Depository Trust Company (''DTC''), Fixed Income Clearing Corporation (''FICC''), ICE Clear Credit (''ICC''), National Securities Clearing Corporation (''NSCC''), and The Options Clearing Corporation (''OCC'').

The Commission is the supervisory agency for DTC, FICC, NSCC, and OCC, and the CFTC is the supervisory agency for CME and ICE. The Commission jointly regulates ICC and OCC with the CFTC. The Commission also jointly regulates ICE Clear Europe (''ICEEU''), which has not been designated as systemically important by FSOC, with the CFTC and Bank of England.

The Commission also jointly regulated CME with the CFTC until 2015, when the Commission published an order approving CME's request to withdraw from registration as a clearing agency. *See* Exchange Act Release No. 34–76678 (Dec. 17, 2015), 80 FR 79983 (Dec. 23, 2015).

[21] *See* 12 U.S.C. 5465(e)(1)(A); 17 CFR 240.19b–4(n). The Commission published a final rule concerning the filing of advance notices for designated clearing agencies in 2012. *See* Exchange Act Release No. 34–67286 (June 28, 2012), 77 FR 41602 (July 13, 2012).

[22] *See* 12 U.S.C. 5465(e).

[23] *See* 12 U.S.C. 5466.

[24] *See* 12 U.S.C. 5472; *see also* Risk Management Supervision of Designated Clearing Entities (July 2011), *available at https://www.federalreserve.gov/publications/other-reports/files/risk-management-supervision-report-201107.pdf* (describing the joint supervisory framework of the Commission, CFTC, and FRB).

[25] *See* 12 U.S.C. 5464(a)(2). The Commission notes that, under Rule 17Ad–22(a)(6), a SIFMU for which the Commission is the supervisory agency is a ''designated clearing agency.'' *See infra* note 134 and accompanying text.

[26] *See* CCA Standards proposing release, *supra* note 5, at 29513; *see also* 17 CFR 240.17Ad–22; Clearing Agency Standards adopting release, *supra* note 5, at 66225–26.

[27] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66224–25.

[28] *See* 17 CFR 240.17Ad–22(b), (d).

[29] *See supra* notes 8–9 and accompanying text.

CFTC is the supervisory agency, and, pursuant to Rule 17Ab2–2, any other clearing agencies determined by the Commission to be covered clearing agencies.

4. Regulation SCI

In 2014, the Commission adopted Regulation Systems Compliance and Integrity (''Regulation SCI'') to strengthen the technology infrastructure of the U.S. securities markets.[30] In particular, the Commission notes that Regulation SCI is designed to reduce the occurrence of systems issues, improve resiliency when systems problems do occur, and enhance the Commission's oversight and enforcement of securities market technology infrastructure. Since adoption of Regulation SCI, the Commission has established a monitoring and examination structure to oversee compliance with Regulation SCI.

Regulation SCI applies to ''SCI entities,'' a term which includes SROs such as registered clearing agencies.[31] It requires SCI entities to, among other things, maintain policies and procedures reasonably designed to ensure that certain systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Exchange Act as well as their own rules.[32] Certain SCI systems that are ''critical SCI systems'' are held to heightened requirements under Regulation SCI,[33] including a requirement to establish, maintain, and enforce written policies and procedures reasonably designed, among other things, to include a two-hour resumption goal following a wide-scale disruption,[34] and broader dissemination obligations for ''major SCI events.'' [35] The definition of critical SCI systems in Regulation SCI was designed to cover ''those SCI systems whose functions are critical to the operation of the markets, including those systems that represent potential single points of failure in the securities markets.'' [36] Regulation SCI requires SCI entities to take certain corrective actions when ''SCI events'' occur. Regulation SCI defines SCI events to include an event in an SCI entity's SCI systems that disrupts, or significantly degrades, the normal operation of an SCI system. In the Regulation SCI adopting release, the Commission explained its view that for clearance and settlement systems a return to ''normal operations'' following a systems disruption would include all steps necessary to effectuate timely and accurate end of day settlement.[37]

5. Relevant International Standards

When prescribing regulations that contain risk management standards for designated clearing agencies, Section 805(a) of the Clearing Supervision Act requires the Commission to consider the relevant international standards and existing prudential requirements.[38] As previously noted, the PFMI is the relevant international standard for systemically important financial market infrastructures, such as covered clearing agencies.[39] The PFMI sets forth twenty-four principles, each of which includes a headline standard and a list of key considerations that further explain the headline standard. Accompanying explanatory notes further discuss the objectives of and rationales for the standards, as well as provide guidance on how the standard can be implemented.[40]

Commission staff co-chaired the working group within CPSS–IOSCO that drafted both the consultative and final versions of the PFMI,[41] and the Commission believes that the requirements applicable to clearing agencies set forth in the Exchange Act and the rules thereunder, including the rules adopted today, are consistent with the standards set forth in the PFMI.[42] Regulatory authorities around the world are in various stages of updating their regulatory regimes to adopt measures consistent with the PFMI.[43] The rules set forth below are a continuation of the Commission's active effort to foster the development of the national clearance and settlement system, consistent with the requirements of the Exchange Act, and enhance the regulation and supervision of SIFMUs, consistent with the Clearing Supervision Act.

In addition, the Basel Committee on Banking Supervision (''BCBS'') has finalized an updated capital framework that sets standards for capital charges arising from bank exposures to CCPs related to OTC derivatives, exchange-traded derivatives, and securities financing transactions.[44] Among other things, the BCBS capital framework includes lower capital charges for exposures to a qualifying CCP (''QCCP'') that is subject to a regulatory framework consistent with the PFMI. The availability of QCCP status for certain covered clearing agencies with bank clearing members would have

[30] *See* Exchange Act Release No. 34–73639 (Nov. 19, 2014), 79 FR 72252 (Dec. 5, 2014) (''Regulation SCI adopting release'').

[31] *See* 17 CFR 242.1000 (providing the definition of ''SCI SROs'').

[32] *See* 17 CFR 242.1001.

[33] *See* 17 CFR 242.1000 (providing definitions of ''SCI systems'' and ''critical SCI systems'').

[34] *See* 17 CFR 242.1001(a)(2)(v).

[35] *See* 17 CFR 242.1002(c)(3).

[36] *See* Regulation SCI adopting release, *supra* note 30, at 72277.

[37] *See id*. at 72285 n.395.

[38] *See* 12 U.S.C. 5464(a)(2); *see also supra* note 25 and accompanying text.

[39] *See supra* note 2 and accompanying text. The PFMI defines a ''financial market infrastructure'' (''FMI'') as a multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions. *See* PFMI, *supra* note 2, at 7. FMIs include CCPs, central securities depositories (''CSDs''), securities settlement systems (''SSSs''), and trade repositories (''TRs''). *Cf.* 12 U.S.C. 5462(6)(B) (defining ''financial market utility'' under the Clearing Supervision Act). The PFMI presumes that all CSDs, SSSs, CCPs, and TRs are systemically important in their home jurisdiction. *See* PFMI, *supra* note 2, at 131 & n.177 (noting the ''presumption . . . that all CSDs, SSSs, CCPs, and TRs are systemically important because of their critical roles in the markets they serve,'' but also noting that ultimately ''national law will dictate the criteria to determine whether an FMI is systemically important'').

The Commission notes that the PFMI's definition of ''financial market infrastructure'' is consistent with the Commission's prior use of the term. *See* Study of Unsafe and Unsound Practices of Brokers and Dealers, H.R. Doc. No. 231, 92d Cong., 1st Sess. 13 (1971) (defining ''financial market infrastructure'' as a multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions).

[40] *See* PFMI, *supra* note 2, at 17.

[41] CPMI–IOSCO has also published subsequent guidance relevant to implementation of the PFMI. *See* PFMI: Disclosure framework and Assessment methodology (Dec. 2012), *available at http://www.bis.org/cpmi/publ/d106.pdf* (''PFMI disclosure framework''); Recovery of FMIs (Oct. 2014), *available at http://www.bis.org/cpmi/publ/d121.pdf*; Public quantitative disclosure standards for CCPs (Feb. 2015), *available at http://www.bis.org/cpmi/publ/d125.pdf* (''PFMI quantitative disclosures''); Guidance on cyber resilience for FMIs (Nov. 2015, consultative report), *available at http://www.bis.org/cpmi/publ/d138.pdf*; Resilience and recovery for CCPs (July 2016, consultative report), *available at http://www.bis.org/cpmi/publ/d149.pdf*.

[42] *See* 15 U.S.C. 78q–1.

[43] *See, e.g.,* CPMI–IOSCO, Implementation monitoring of PFMIs: Third update to the Level 1 assessment report (June 2016), *available at http://www.bis.org/cpmi/publ/d145.pdf* (describing efforts by various jurisdictions to adopt standards for FMIs consistent with the PFMI). Both the CFTC and FRB have indicated publicly that they have completed all measures necessary to incorporate fully the PFMI into their regulatory frameworks. *See id*. at 35.

[44] *See* BCBS, Capital requirements for bank exposures to central counterparties (Apr. 2014), *available at http://www.bis.org/publ/bcbs282.pdf* (''BCBS capital framework''). *See generally* Basel III: A global regulatory framework for more resilient banks and banking systems (rev. June 2011), *available at http://www.bis.org/publ/bcbs189.pdf* (describing the Basel III framework, which preceded the BCBS capital framework).

implications for the capital charges applicable to those members.[45]

6. Recognition and Equivalence Within the EU

The Commission is aware of recent public attention on the availability of QCCP status under EU capital requirements for certain covered clearing agencies that operate in the United States and have bank clearing members affiliated with a European Union (''EU'') entity.[46] Specifically, the Commission understands that availability of QCCP status in the EU for a U.S. CCP hinges on the European Securities and Markets Authority (''ESMA'') recognizing the U.S. CCP pursuant to the requirements of the European Markets Infrastructure Regulation (''EMIR''). Recognition by ESMA, in turn, is subject to the European Commission (''EC'') first making certain findings regarding the Commission's regulatory regime for CCPs.[47] Recognition by ESMA would result in QCCP status for those U.S. CCPs for purposes of the EU's capital requirements, allowing EU-based clearing members of U.S. CCPs to continue to operate and provide clearing services to market participants based in the EU. Under the EU's capital requirements regulation, EU banks and their subsidiaries will incur higher capital charges if they clear through a U.S. CCP not afforded QCCP status in the EU, that is, a CCP not recognized or authorized by ESMA.[48]

As an initial matter, the Commission understands that, for the EC to make an equivalence decision, Article 25(6) of the European Markets Infrastructure Regulation (''EMIR'') requires the EC to determine that

> the legal and supervisory arrangements of a third country ensure that CCPs authorised in that third country comply with legally binding requirements which are equivalent to the requirements laid down in [EMIR], that those CCPs are subject to effective supervision and enforcement in that third country on an ongoing basis and that the legal framework of that third country provides for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes.[49]

The Commission understands that its adoption of new Rule 17Ad–22(e) could be relevant to the EC's ongoing consideration of the Commission's regulatory regime for CCPs.[50] Further, with respect to EMIR's requirement that the legal and supervisory regime of the United States include an ''effective equivalent system'' for the recognition of CCPs authorized under non-U.S. legal regimes, the Commission notes the following.[51]

First, the Commission observes that, in certain specific contexts, it is not unfamiliar with the EMIR regime given that one registered clearing agency, ICEEU, is subject to EMIR and will be a covered clearing agency pursuant to Rule 17Ad–22(a)(5).[52] As previously discussed, each registered clearing agency is an SRO subject to Section 19(b) of the Exchange Act, which requires SROs to submit proposed rule changes to the Commission for public comment and Commission review and approval.[53] In the course of its regulation of ICEEU as a registered clearing agency, the Commission has published, reviewed, and approved under the Exchange Act a number of proposed rule changes submitted by ICEEU under Rule 19b–4 that, based on the information and representations made by ICEEU at the time, were intended to facilitate ICEEU's efforts to comply with EMIR. These proposed rule changes covered such areas as (i) segregation and portability of customer positions and margin, (ii) risk modeling, (iii) back testing, (iv) stress testing, (v) default management, and (vi) liquidity risk management.[54]

Further, the Commission observes that the Exchange Act and Commission rules require that CCPs register with the Commission in certain circumstances, and if registered, must comply with the relevant U.S. requirements, including the Commission rules applicable to registered clearing agencies. The Commission also observes that the registration and supervisory framework for clearing agencies under the Exchange Act provides the Commission with broad authority to provide exemptive relief from certain of the Commission's regulatory requirements under the Exchange Act. Specifically, Section 17A(b)(1) of the Exchange Act provides the Commission with authority to exempt a clearing agency or any class of clearing agencies from any provision of Section 17A or the rules or regulations thereunder. Such an exemption may be effected by rule or order, upon the Commission's own motion or upon application, and conditionally or unconditionally.[55] The

[45] *See infra* Part III.A.1.b (further discussing the BCBS capital framework). The FRB and the Office of the Comptroller of the Currency have adopted rules implementing the material elements of the BCBS interim framework for capitalization of bank exposures to CCPs. *See* 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) (''Regulatory Capital Rules''). In doing so, the FRB noted the ongoing international discussions on the topic and stated that it intends to revisit its rules once the BCBS capital framework is revised. *See id.* The FRB and the Office of the Comptroller of the Currency's rules define ''QCCP'' to mean, among other things, a SIFMU under the Clearing Supervision Act. *See* 12 CFR 217.2; *see also* Regulatory Capital Rules, *supra,* at 62100.

[46] *See, e.g.,* Fiona Maxwell, EU members of U.S. options CCP face $30 billion capital hit: OCC fears approval will be held up by absence of SEC clearing rules, Risk.net, Nov. 30, 2015, *available at http://www.risk.net/risk-magazine/news/2436901/eu-members-of-us-options-ccp-face-usd30bn-capital-hit* (''A new wrinkle in the transatlantic dispute over clearing house regulation could leave 18 European banks facing an estimated $30 billion jump in capital requirements, and limit access to equity options listed in the [United States] . . . . The potential capital hit for OCC members is a consequence of the Capital Requirements Regulation (CRR), which states that European banks—whether acting through their branch or subsidiary—will only be given a 2% risk weight for cleared trades if using a so-called qualifying CCP following expiration of the current extended grandfathering period. Clearing at a non-QCCP can translate to risk weights of more than 1250%.'').

[47] On March 16, 2016, the EC issued an equivalence decision stating that the CFTC's regulatory framework for CCPs is equivalent to EU requirements. *See* Commission Implementing Decision (EU) 2016/377 of 15 March 2016 on the equivalence of the regulatory framework of the United States of America for central counterparties that are authorised and supervised by the CFTC to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council, *available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016D0377.*

[48] Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms. As noted earlier, although the United States affords QCCP status to SIFMUs, QCCP status in the EU is distinct from the U.S. banking regulators' determination that any FMU designated as systemically important by FSOC is a U.S. QCCP.

[49] *See* Article 25(6), Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, *available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R0648.*

[50] *See, e.g.,* Philip Stafford, European banks face U.S. capital hit unless rules converge, FT.com, Apr. 4, 2016, *available at http://www.ft.com/cms/s/0/bbe6678a-f5c5-11e5-803c-d27c7117d132.html#axzz48oFXlFrR.*

[51] *See* Article 25(6) of EMIR.

[52] As noted above, ICEEU is also regulated by the Bank of England. *See supra* note 20.

[53] *See supra* Part I.C.5 (further describing the obligations of a registered clearing agency to file proposed rule changes under Rule 19b–4).

[54] *See* Exchange Act Release No. 34–73075 (Sept. 11, 2014), 79 FR 55848 (Sept. 17, 2014); Exchange Act Release No. 34–72756 (Aug. 4, 2014), 79 FR 46479 (Aug. 8, 2014); Exchange Act Release No. 34–72755 (Aug. 4, 2014), 79 FR 46481 (Aug. 8, 2014); Exchange Act Release No. 34–72754 (Aug. 4, 2014), 79 FR 46477 (Aug. 8, 2014).

[55] To apply with the Commission for an exemption under Section 17A(b)(1), the applicant must complete and file a Form CA–1. In this context, an applicant must attach to its Form CA–1, along with the other customary exhibits, an Exhibit S. The Exhibit S is a statement by the applicant demonstrating why the granting of an exemption would be consistent with the public interest, the protection of investors and the

Commission's exercise of authority to grant exemptive relief must be consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[56]

The outcome of any exemptive request by the Commission (including, potentially, any exemptions from requirements under Rule 17Ad–22(e)) is dependent on a number of elements. For example, the Commission has used its authority under Section 17A(b)(1) of the Exchange Act to grant exemptions to certain non-U.S. clearing agencies. These exemptions have been tailored in each instance to the exemptive applicants' contemplated clearing agency activities. In certain instances, non-U.S. clearing agencies have received exemptive relief from the registration requirement under Section 17A(b)(1) to perform the functions of a clearing agency with respect to transactions involving U.S. government and agency securities for U.S. participants.[57] Factors the Commission has considered when determining whether to grant an exemption have included the anticipated level or volume of activity that the applicant seeks to effect within the United States. Generally, the particular system of supervision and oversight in a jurisdiction may also be factors for the Commission to consider in evaluating any non-U.S. framework.

Other factors the Commission could consider in exercising its exemptive authority could include: the structure of, scope of, and requirements under the regulatory regime to which the applicant is subject in its home jurisdiction; the extent to which the presence of said regime is relevant to the findings the Commission must make in considering an exemption under Section 17A(b)(1) of the Exchange Act, and the nature of the non-U.S. covered clearing agency's activities. Such factors, depending on the attendant facts and circumstances, could lead the Commission to determine that the full scope of the requirements under Rule 17Ad–22(e) need not be applied to a non-U.S. clearing agency to achieve the Commission's regulatory objectives.

The Commission also notes that where it has exercised its exemptive authority under Section 17A(b)(1) of the Exchange Act, the Commission and the relevant national competent authority (''NCA'') of the non-U.S. clearing agency have entered into cooperative arrangements whereby the Commission and the NCA have arranged to communicate and cooperate to fulfill their respective regulatory mandates.[58] For the purposes of the discussion immediately above, such cooperation could also be useful in streamlining the Commission's consideration and analysis of an application for registration or an exemption from any provision of Section 17A of the Exchange Act or the rules or regulations thereunder by a non-U.S. clearing agency. For example, in the case of a non-U.S. clearing agency that is seeking to register or seeking an exemption with the Commission and is already subject to EMIR, the Commission could look to coordinate with the applicant's NCA for the purposes of analyzing and evaluating any materials the applicant might submit as part of the Form CA–1, including the documentation generated in the course of the NCA's EMIR authorization process for the applicant, and any self-assessment an applicant might produce to evidence its analysis of potential duplication between EMIR requirements and Commission requirements for registered clearing agencies. Such cooperative arrangements could be useful not only for the registration or exemption process but also ongoing coordinated or joint supervisory matters between the Commission and the NCA. However, as previously noted, additional careful analysis would need to be performed by the Commission on a case-by-case basis before the Commission could be willing to determine whether such cooperative arrangements would be appropriate.

B. Summary of the Commission's Proposal

The Commission is adopting Rules 17Ad–22(e) and (f) and amendments to Rules 17Ad–22(a) and (d) substantially as proposed. The Commission is adopting Rule 17Ab2–2 with several modifications in light of the comments received. Modifications to the proposed rules are discussed in Part II. Below is a brief summary of the Commission's proposal as set forth in the CCA Standards proposing release.

In proposing amendments to Rule 17Ad–22, the Commission sought to establish an enhanced regulatory framework for registered clearing agencies that meet the definition of a ''covered clearing agency.'' Specifically, as proposed, a covered clearing agency would include (i) a designated clearing agency; (ii) a complex risk profile clearing agency unless the CFTC is the supervisory agency; [59] and (iii) any other registered clearing agency that the Commission determines to be a covered clearing agency pursuant to the procedures set forth in proposed Rule 17Ab2–2. A covered clearing agency would be subject to the requirements in Rule 17Ad–22(e) whereas a registered clearing agency that is not a covered clearing agency would remain subject to the requirements in Rule 17Ad–22(d).[60] As discussed in the CCA Standards proposing release, the Commission believed that such an approach would allow the Commission to maintain discretion to apply Rule 17Ad–22(d) to certain new clearing agencies while also

purposes of Section 17A of the Exchange Act, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

[56] *See* 15 U.S.C. 78q–1(b)(1).

[57] *See* Exchange Act Release No. 34–39643 (Feb. 11, 1998), 63 FR 8232 (Feb. 18, 1998), *as modified by* Exchange Act Release No. 34–43775 (Dec. 28, 2000), 66 FR 819 (Jan. 4, 2001); Exchange Act Release No. 34–38328 (Feb. 24, 1997), 62 FR 9225 (Feb. 28, 1997).

In the case of matching service providers, the Commission first sought comment on providing exemptive relief before considering any application for exemptive relief. *See* Exchange Act Release No. 34–39829 (Apr. 6, 1998), 63 FR 17943 (Apr. 13, 1998) (''Even though matching services fall within the definition of clearing agency, the Commission preliminarily is of the view that an entity that limits its clearing agency functions to providing matching services need not be subject to the full panoply of clearing agency regulation.''). The Commission then engaged a close analysis of the attendant facts and circumstances of each applicant for an exemption from registration as a clearing agency on a case-by-case basis. *See, e.g.,* Exchange Act Release No. 34–44188 (Apr. 17, 2001), 66 FR 20494 (Apr. 23, 2001) (order granting exemption from registration as a clearing agency to Global Joint Venture Matching Services—US, LLC, now Omgeo).

[58] *See, e.g.,* Understanding regarding an Application of Euroclear Bank for an Exemption under U.S. Federal Securities Laws (Jan. 30, 2001), *available at https://www.nbb.be/doc/cp/nl/aboutcbfa/mou/pdf/mou_2001-01-30_euroclearbank.pdf*; Exchange Act Release No. 34–37309 (June 12, 1996) (notice of filing of application for exemption from registration as a clearing agency by Cedel Bank); *see also* Undertaking on Consultation and Cooperation regarding Belgian Firms that are Members of U.S. Clearing Organizations (July 6, 2006), *available at http://www.sec.gov/about/offices/oia/oia_bilateral/belgium.pdf*.

[59] The Commission notes that, as defined in Rule 17Ad–22(a)(4) and as used in this release, ''security-based swap clearing agencies'' are a subset of complex risk profile clearing agencies that provide CCP services for security-based swaps. For a CCP other than a security-based swap clearing agency, the Commission may determine whether the activities of such CCP have a more complex risk profile and, therefore, whether such CCP is a covered clearing agency pursuant to Rule 17Ab2–2. *See infra* Part II.D (further discussing Commission determinations under Rule 17Ab2–2).

[60] Rule 17Ad–22(d) sets forth minimum requirements for the operation and governance of registered clearing agencies. Under the proposal, all registered clearing agencies and covered clearing agencies would also remain subject to the requirements in Section 17A of the Exchange Act and the other relevant Commission rules and regulations thereunder, including Rules 17Ad–22(a), (b), and (c).

applying the requirements under Rule 17Ad–22(e) to those clearing agencies that raise systemic risk concerns due to, among other things, their size, systemic importance, global reach, or the risks inherent in the products they clear.[61] To facilitate this approach, the Commission proposed to modify Rule 17Ad–22(d) so that it would only apply to a registered clearing agency other than a covered clearing agency.

Under proposed Rule 17Ad–22(e), a covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to address the following topics concerning its operation and governance:

- General organization (including legal basis, governance, and a framework for the comprehensive management of risks);
- financial risk management (including credit risk, collateral, margin, and liquidity risk);
- settlement (including settlement finality, money settlements, and physical deliveries);
- CSDs and exchange-of-value settlement systems;
- default management (including default rules and procedures and segregation and portability);
- business and operational risk management (including general business risk, custody and investment risks, and operational risk);
- access (including access and participation requirements, tiered participation arrangements, and links);
- efficiency (including efficiency and effectiveness and communication procedures and standards); and
- transparency.

The Commission is adopting Rule 17Ad–22(e) substantially as proposed. Each of the requirements under Rule 17Ad–22(e), any modifications made thereto, and the comments received with respect to them, are discussed in Part II.C.

In addition, the Commission proposed Rule 17Ab2–2 to provide the Commission with procedures to make determinations regarding the following:

- Whether a registered clearing agency should be considered a covered clearing agency;
- whether a covered clearing agency meets the definition of ''systemically important in multiple jurisdictions;'' [62] and
- whether the activities of a clearing agency providing CCP services have a more complex risk profile.

The proposed rule would allow such determinations to occur either at the Commission's own initiative or upon request by either a clearing agency or one of its members. In each case, the Commission would publish notice of its intention to consider such determinations, together with a brief statement of the grounds under consideration, and provide at least a 30-day public comment period prior to any determination. Under the proposed rule, the Commission may also provide a clearing agency subject to any proposed determination opportunity for hearing. The Commission is adopting Rule 17Ab2–2 substantially as proposed. Modifications to Rule 17Ab2–2 made in response to the comments received are discussed in Part II.D.

To facilitate the addition of proposed Rule 17Ad–22(e) and proposed Rule 17Ab2–2, the Commission proposed to add 14 new definitions to Rule 17Ad–22(a). The Commission is adopting those definitions substantially as proposed, but is combining the definitions of ''sensitivity analysis'' and ''conforming sensitivity analysis'' into one definition of ''sensitivity analysis.'' [63] Each of the definitions, any modifications made thereto, and the comments received with respect to them, are discussed in Part II.C.

Finally, the Commission also proposed Rule 17Ad–22(f) to codify the Commission's statutory authority under Section 807(c) of the Clearing Supervision Act. The Commission received no comments regarding Rule 17Ad–22(f) and is adopting it as proposed.[64]

C. Comments Received

The Commission received seventeen comment letters in response to the CCA Standards proposing release.[65] Commenters included market participants from across the financial industry, including registered clearing agencies, non-U.S. clearing agencies, non-profit groups, various entities participating in or representing professionals who provide investment or asset management services, participants in the derivatives markets, an association of banks representing clearing participants and members of certain CCPs, and members of the general public.

Commenters generally supported the Commission's proposal and the Commission's ongoing efforts to regulate registered clearing agencies,[66] though several also raised concerns regarding certain aspects of the proposed rules, as discussed throughout this release. Below is a discussion of the comments that were not directed to the content of a particular proposed rule and, where appropriate, the Commission's response.[67] Comments received that were directed to a particular proposed rule, or aspects thereof, are discussed in Part II.

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[61] *See* CCA Standards proposing release, *supra* note 5, at 29516.

[62] *See infra* note (discussing the definition of ''systemically important in multiple jurisdictions'').

[63] Each definition is discussed in Part II. For discussion of the new definition of ''sensitivity analysis,'' see Part II.C.6.c.

[64] *See infra* Part II.E.

[65] *See* letters from Timothy W. Cameron, Asset Management Group—Head, and Laura Martin, Asset Management Group—Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, and David W. Blass, General Counsel, and Jennifer S. Choi, Associate General Counsel, Investment Company Institute (May 12, 2016) (''AMG–ICI''); Chris Barnard (May 26, 2014) (''Barnard''); Dennis M. Kelleher, President and CEO, Stephen Hall, Securities Specialist, Katelynn Bradley, Attorney, and Caitlin Kline, Derivatives Specialist, Better Markets, Inc. (May 27, 2014) (''Better Markets''); Kurt N. Schact, CFA, Managing Director, Standards and Financial Market Integrity, and Linda L. Rittenhouse, Director, Capital Markets, CFA Institute (May 27, 2014) (''CFA Institute''); Kathleen M. Cronin, Senior Managing Director, General Counsel, and Corporate Secretary, CME Group, Inc. (May 27, 2014) (''CME''); Larry E. Thompson, Managing Director and General Counsel, The Depository Trust and Clearing Corporation (May 27, 2014) (''DTCC''); Scott C. Goebel, Senior Vice President and General Counsel, Fidelity Investments (May 27, 2014) (''Fidelity''); Paul Swann, President and Managing Director, ICE Clear Europe Limited (May 23, 2014) (''ICEEU''); Dorothy M. Donohue, Acting General Counsel, Investment Company Institute (May 21, 2014) (''ICI''); Stephen O'Connor, Chairman, International Swaps and Derivatives Association, Inc. (May 22, 2014) (''ISDA''); John Joyce, Northern Illinois University College of Law (Apr. 1, 2014) (''Joyce''); Susan Milligan, Head of U.S. Public Affairs, LCH.Clearnet (May 27, 2014) (''LCH''); James E. Brown, Executive Vice President, General Counsel, and Secretary, The Options Clearing Corporation (May 27, 2014) (''OCC''); Akshat Tewary et al., Occupy the SEC (June 10, 2014) (''OSEC''); Sheila Bair, Chair, The Systemic Risk Council (May 28, 2014) (''SRC''); Jarryd E. Anderson, Vice President, Regulatory Affairs, The Clearing House Association LLC (May 27, 2014) (''The Clearing House''); Tim Buckley, Managing Director and Chief Investment Officer, and John Hollyer, Principal and Head of Risk Management and Strategy Analysis, Vanguard (May 27, 2014) (''Vanguard''). Copies of the comment letters are available at *http://www.sec.gov/comments/s7-03-14/s70314.shtml*.

[66] *See* Barnard at 1 (also focusing support on the proposed financial risk management and liquidity requirements); CFA Institute at 2 (expressing overall support for the proposed rules); CME at 2 (applauding the Commission's efforts to support dually registered entities as they continue to focus their resources on the important work of maintaining effective systems of governance and enhancing their operational strength); DTCC at 3 (stating that it is broadly supportive of the proposed rules); ICEEU at 1 (expressing support for comprehensive regulation of clearing agencies and linking such comprehensive regulation to the PFMI and the rules of the Commission); OCC at 3 (expressing support for the Commission's effort to strengthen the substantive regulation of registered clearing agencies).

[67] For comments not directed to the substance of the proposal itself, see Part I.C.7.

1. Financial Stability and the Dodd-Frank Act

One commenter supported the Commission's stated goal of contributing to the enhancement of the stability of the U.S. securities markets.[68] Another commenter strongly supported the Commission's efforts to promote financial stability through the application of enhanced standards for covered clearing agencies, in particular those that act as CCPs for security-based swaps and other derivatives.[69] A third commenter similarly expressed the belief that the proposed requirements should promote market integrity, improve the robustness of clearing systems, and protect the financial system against contagion.[70] The Commission believes that Rule 17Ad–22(e) achieves these goals by supporting the objectives of (i) the Exchange Act to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and linked or coordinated facilities for clearance and settlement of securities transactions, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents,[71] and (ii) the Clearing Supervision Act to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[72]

One commenter generally supported the mandate of Title VII of the Dodd-Frank Act to promote transparency and regulation in the derivatives markets.[73] Another commenter noted that the Dodd-Frank Act has sought to shed light on the opaque markets for swaps and other exotic OTC derivatives, which numerous other commentators have asserted contributed to the recent financial crisis, by requiring such derivatives to be cleared through registered clearing agencies.[74] The commenter stated that this shift toward transparency could be useful if clearing agencies are themselves robust and stable, noting that, in some ways, the risks associated with OTC derivatives trading have not gone away but simply shifted to clearing agencies. The commenter stated that, thus, it is vital for the Commission to not only promulgate strong regulations for clearing agencies but also to enforce such regulations in a vigorous manner. As noted above, the Commission believes that the focus in Rule 17Ad–22(e) on transparency, governance, financial risk management, and operational risk management are consistent with the objectives of promoting strong rules that help ensure covered clearing agencies are robust and stable, and that any risks particular to OTC derivatives trading and the risks present in clearing such derivatives are addressed in requirements for the covered clearing agency's management of financial risks.

2. Relationship Between Rules 17Ad–22(d) and (e)

One commenter generally supported the Commission's approach to the regulation of registered clearing agencies, which the commenter stated applies a more general set of standards under Rule 17Ad–22(d) for registered clearing agencies other than covered clearing agencies.[75] The commenter stated that this framework would allow new entrants to more firmly establish themselves as clearing agencies, which is important for the deconsolidation and diffusion of risk across the market. The commenter noted that at present the clearance and settlement industry, like much of the financial sector, can be described as highly concentrated, and stated that it is paramount that the Commission set policies that promote the proliferation of viable new clearing agencies, given that existing clearing agencies typically serve as intermediaries for trillions of dollars in trading volumes. In the commenter's view, such concentration in the provision of clearance and settlement services results in risk concentration and inhibits price allocation for services, which, in turn, inhibits liquidity.[76] The Commission is mindful of these concerns and notes, as discussed above, that the approach under Rules 17Ad–22(d) and (e) take into account various clearing agency activities and the risks they pose while promoting robust risk management practices and the general safety and soundness of registered clearing agencies. In particular, as discussed in Part III.B.1.d, the Commission has considered the level of concentration in the provision of clearing agency services.

One commenter expressed the belief that some of the proposed requirements under Rule 17Ad–22(e) represent a clarification of existing requirements under Rule 17Ad–22(d) rather than enhanced standards related to the particular risks arising from a clearing agency's systemic importance.[77] The commenter recommended that the Commission review and revise Rule 17Ad–22(d) to align it with the analogous provisions under proposed Rule 17Ad–22(e), particularly if the different language in the proposed rule is intended to clarify language in the existing rule or represents a logical outgrowth from it. The commenter stated that, to the extent any provision of the proposed rules reflects a best practice, the provision should apply to all registered clearing agencies.[78]

The Commission does not believe that the requirements under Rule 17Ad–22(e) represent a clarification of existing requirements in Rule 17Ad–22(d) or a codification of best practices. As discussed above, the Commission proposed to maintain Rule 17Ad–22(d) to ensure that the Commission could efficiently and effectively regulate registered clearing agencies depending on the specific activity and risks that each type of clearing agency poses to the U.S. financial system. Thus, Rule 17Ad–22(d) applies requirements to registered clearing agencies other than covered clearing agencies, consistent with the continuing development of the national system for clearance and settlement. Since no clearing agency would be subject to both Rule 17Ad–22(d) and Rule 17Ad–22(e), the Commission does not believe that confusion would arise from similarities or differences between the requirements under the two separate rules. With respect to best practices, 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, and is not an attempt to merely reflect best practices.[79]

One commenter stated that the Commission must be vigilant to prevent companies from engaging in regulatory arbitrage by seeking application of Rule 17Ad–22(d) when the requirements of

[68] *See* CME at 1.

[69] *See* The Clearing House at 1.

[70] *See* Barnard at 1.

[71] *See supra* notes 3–4 and accompanying text.

[72] *See supra* note 18 and accompanying text.

[73] *See* Vanguard at 1.

[74] *See* OSEC at 3.

[75] *See* OSEC at 1. The commenter, however, also raised concerns with the proposed dual framework under existing Rule 17Ad–22(d) and proposed Rule 17Ad–22(e) because the commenter believed the dual framework could facilitate regulatory arbitrage. *See id.* at 1–2; *see also infra* note 80 and accompanying text.

[76] *See id.*

[77] *See* DTCC at 4 (citing proposed Rules 17Ad–22(e)(1), (8), (10), and (12) as examples).

[78] *See id.*

[79] *See* CCA Standards proposing release, *supra* note 5, at 29516.

proposed Rule 17Ad–22(e) would be more appropriate.[80] The commenter explained that the Commission can expect, for instance, large entities to float new subsidiaries or affiliates seeking to operate under Rule 17Ad–22(d), even though the risk profile of the subsidiary may be part of the greater risk exposure of the entity at-large.[81] The Commission is mindful of this concern and notes that, in a separate release, the Commission has proposed an expanded definition of ''covered clearing agency'' that, if adopted, may further reduce potential opportunities for arbitrage.[82]

The same commenter also recommended that the Commission regularly evaluate registered clearing agencies subject to Rule 17Ad–22(d) to ensure that their activities have not risen to a level warranting oversight and requirements pursuant to Rule 17Ad–22(e).[83] The commenter stated that the Commission should require frequent audits of the policies and procedures of clearing agencies operating under Rule 17Ad–22(d) and proposed Rule 17Ad–22(e) because (i) smaller, profitable clearing agencies may quickly outgrow Rule 17Ad–22(d) and (ii) covered clearing agencies may shift their operations materially after crafting robust policies and procedures under Rule 17Ad–22(e). In addition, the commenter noted that even if policies and procedures are implemented in good faith, their efficacy could be questionable because standard measurements of credit and liquidity risk may only encourage excessive confidence in the risk profile of financial institutions.[84] The same commenter stated that the Commission's vigorous enforcement of clearing rules will ultimately remain more important in achieving real-world risk reduction than the mere promulgation of detailed rules.[85] The commenter noted that clearing agencies by definition collect various counterparty risks and, while the agglomeration of such risks by clearing agencies may have not played a significant role in the most recent financial crisis, the continued growth of trading operations and the consolidation of market power in the banking and finance sectors suggest that clearing agencies could serve as ''ground zero'' in the next crisis.[86]

As to this commenter, the Commission notes that registered clearing agencies are subject to inspections and examinations under both the Exchange Act and the Clearing Supervision Act.[87] The Commission also monitors registered clearing agencies to assess and evaluate the risks posed by each clearing agency. Rule 17Ad–22(e) provides the Commission with requirements against which a covered clearing agency can be, among other things, monitored, inspected, and examined with respect to its establishing, implementing, maintaining, and enforcing policies and procedures for managing credit and liquidity risk and its compliance with such policies and procedures. In addition, the Commission is proposing in a separate release to expand the definition of ''covered clearing agency'' to include all CCPs, CSDs, and SSSs. If adopted, the requirements applied to CCPs, CSDs, and SSSs would be uniform under Rule 17Ad–22(e).[88]

3. Relationship Among Rules 17Ad–22(b), (c), and (e)

One commenter raised concerns regarding overlap between existing Rules 17Ad–22(b)(1) through (4) and several of the provisions of proposed Rule 17Ad–22(e).[89] The commenter expressed the belief that proposed Rules 17Ad–22(e)(4), (6), and (7) fully address all of the matters covered by existing Rules 17Ad–22(b)(1) through (4) and that subjecting covered clearing agencies that provide CCP services to both sets of requirements may create ambiguities and inconsistencies.[90] The commenter urged the Commission to revise the proposal so that the provisions of existing Rules 17Ad–22(b)(1) through (4) are not applicable to covered clearing agencies that provide CCP services.[91] The Commission notes that the commenter has not identified specific ambiguities or inconsistencies between Rules 17Ad–22(b) and (e) that might result from application of both rule sets. With respect to the potential for inconsistency, the Commission believes that while Rule 17Ad–22(e) may overlap with some requirements in Rule 17Ad–22(b), it is not inconsistent with Rule 17Ad–22(b) and, as a general matter, includes requirements intended to supplement the more general requirements in Rule 17Ad–22(b). With respect to the potential for ambiguity, the Commission notes that Rule 17Ad–22(b) applies to a registered clearing agency that provides CCP services and Rule 17Ad–22(e) applies to a registered clearing agency that is a covered clearing agency. To the extent that a registered clearing agency is one that both provides CCP services and is a covered clearing agency, then it is subject to the requirements in both rule sets, with the more general requirements in Rule 17Ad–22(b) supplemented by the requirements of Rule 17Ad–22(e). The Commission therefore is declining to limit application of Rule 17Ad–22(b) to clearing agencies that provide CCP services and are not covered clearing agencies.

The commenter stated in the alternative that, at a minimum, the Commission should clarify that the requirement in existing Rule 17Ad–22(c)(1), which requires a registered clearing agency that provides CCP services to calculate and maintain a record of its financial resources available to cover participant defaults in accordance with existing Rule 17Ad–22(b)(3), should instead be determined and calculated in accordance with proposed Rule 17Ad–22(e)(4). The Commission believes that such clarification in the rule text is appropriate. The Commission further believes that, in light of the closely linked nature between the management of credit and liquidity risk, and the holistic approach taken in Rule 17Ad–22(e),[92] a covered clearing agency generally should also calculate and maintain a record of its qualifying liquid resources under Rule 17Ad–22(e)(7). The Commission therefore is amending Rule 17Ad–22(c)(1) to include a reference to the requirements for financial resources and qualifying liquid resources in Rules 17Ad–22(e)(4) and (e)(7) respectively, so that covered clearing agencies have reporting requirements for their financial and qualifying liquid resources equivalent to other registered clearing agencies.[93] The Commission notes that, to the extent the computations for financial resources under Rules 17Ad–22(b)(3) and (e)(4) are the same, a covered clearing agency could indicate so in the supporting documentation required pursuant to Rule 17Ad–22(c)(1).

[80] *See* OSEC at 1–2.

[81] *See id.* at 2.

[82] In a separate release, the Commission is proposing to modify the definition of ''covered clearing agency'' to include all CCPs, CSDs, and SSSs. *See* Exchange Act Release No. 34–78963 (Sept. 28, 2016) (''CCA Definition proposing release'').

[83] *See* OSEC at 2.

[84] *See id.*

[85] *See id.*

[86] *See id.*

[87] *See* 12 U.S.C. 5466.

[88] *See supra* note 82.

[89] *See* DTCC at 4–5.

[90] *See id.* at 5.

[91] *See id.; see also* 17 CFR 240.17Ad–22(b)(1)–(4).

[92] *See infra* Part II.B (discussing the principles based approach to Rule 17Ad–22(e)).

[93] *See* Rule 17Ad–22(c)(1), *infra* Part VI.

4. Risk of Duplicative or Inconsistent Regulation

One commenter noted that coordination among regulators in implementing derivatives reform is critical to the efficient functioning of the derivatives market by alleviating duplicative and potentially conflicting regulation of cross-border transactions.[94] In response, the Commission notes that, as discussed above and previously in the CCA Standards proposing release, the Commission has consulted with the CFTC, FRB, and FSOC in developing these rules.[95]

Another commenter similarly expressed the belief that consistent international regimes are critical to mitigating regulatory arbitrage because opportunities for regulatory arbitrage would disadvantage smaller market participants.[96] The commenter stated that no basis exists for different regulatory treatment between U.S. and non-U.S. markets for security-based swaps, noting that the Commission may conform its standards for clearing agencies to reflect evolving international standards, consistent with the Dodd-Frank Act and the Exchange Act.[97] As noted above, the Commission has considered the relevant international standards in developing these rules, consistent with the Dodd-Frank Act and the Exchange Act, and the Commission believes that the scope of and requirements in Rule 17Ad–22(e) appropriately address the risk profile of CCPs that clear security-based swaps.[98]

A third commenter supported the view that imposing requirements on dually registered entities would subject them to duplicative regimes,[99] and the commenter stated that avoiding unnecessarily duplicative regulation allows for the most efficient use of both public and private sector resources towards the shared goal of protecting the financial system.[100]

A fourth commenter stated that the Commission should be wary of imposing additional requirements on top of those imposed by other regulators, particularly where other regulators are attempting to (or have) imposed the same or substantially similar standards.[101] The commenter expressed the concern that, particularly for those clearing entities that are regulated by multiple governmental authorities in multiple jurisdictions, the approach taken in the proposed rules may unnecessarily subject clearing entities to the risk of duplicative or inconsistent regulation.[102] The commenter expressed the belief that avoiding unnecessarily duplicative or, worse, inconsistent regulation is key to maximizing effective regulation and the use of limited regulatory activities.[103] The commenter stated that avoiding unnecessarily duplicative regulation will also allow the Commission to focus its resources on the particular activities within its jurisdiction that present increased risks and should therefore be subject to increased supervision. The commenter urged the Commission, in implementing enhanced standards for covered clearing agencies, to take a more flexible approach that is not ''one-size-fits-all'' and considers the overall regulatory status of the relevant clearing agency.[104]

With respect to these two commenters, the Commission notes, as previously discussed, that the Commission has consulted with the CFTC, FRB, and FSOC in the development of these rules to, in part, avoid unnecessarily duplicative or inconsistent regulation with respect to clearing agencies that are dually registered in the United States. With respect to such clearing agencies—as well as clearing agencies regulated by authorities in other jurisdictions—the Commission is nonetheless mindful, pursuant to the comprehensive framework for regulating swaps and security-based swaps established in Title VII, that the SEC has been given regulatory authority over security-based swaps. CCPs that clear security-based swaps present risks to the securities markets that must be subject to appropriate risk management. The Commission's intent with respect to Rule 17Ad–22(e) is, in part, to take another incremental step under Rule 17Ad–22 to ensure that these risks are appropriately managed consistent with the purposes of the Exchange Act, the Clearing Supervision Act, and Title VII of the Dodd-Frank Act.[105] In this regard, the Commission does not believe that it has taken a ''one-size-fits-all'' approach; rather, the Commission has, through Rule 17Ad–22, sought to apply requirements commensurate and appropriate to the risk posed by the clearing agency functions and activities specific to covered clearing agencies as they exist in, and serve, the U.S. securities markets. The Commission acknowledges that other rules and regulations may apply to a covered clearing agency that are similar in scope or purpose to Rule 17Ad–22(e). However, the presence of similar regulations does not negate the Commission's obligation to ensure that risk in the U.S. securities markets is appropriately managed consistent with the purposes of the Exchange Act, the Clearing Supervision Act, and Title VII of the Dodd-Frank Act. Further, because Rule 17Ad–22(e) and other comparable regulations—including those of the CFTC—are based on the same international standards,[106] the potential for inconsistent regulation is low. The commenters have provided no examples suggesting that Rule 17Ad–22(e) is inconsistent with another comparable regulation. Nonetheless, Part I.A.6 above discusses the process by which the Commission could consider the attendant facts and circumstances in assessing the application of Rule 17Ad–22(e) to a non-U.S. covered clearing agency that is subject to similar regulation in its home jurisdiction, and Part II.A.2 further discusses comments regarding the risk of duplicative or inconsistent regulation targeted to security-based swap clearing agencies subject to similar regulation in the home jurisdiction.

Finally, one commenter noted that opportunities for regulatory arbitrage may exist based on differences between the Commission's proposed approach and rules adopted by the CFTC.[107] Opportunities for regulatory arbitrage only exist, however, when there are gaps or conflicting regulations for the same matter. Here, as noted above, the Commission and CFTC have separate and distinct statutory mandates, as set forth in the Exchange Act and the Commodity Exchange Act, respectively, for the different markets they regulate. The Commission has specific authority over the national system for clearance and settlement of U.S. securities transactions, including transactions involving security-based swaps.[108] Under the Clearing Supervision Act, the Commission also has specific authority over those SIFMUs for which it is the

[94] *See* ICI at 2.

[95] *See* CCA Standards proposing release, *supra* note 5, at 29508 (noting that the Commission has begun, and intends to continue, consultation with the CFTC, FRB, and FSOC).

[96] *See* Fidelity at 7.

[97] *See id.* at 7–8.

[98] *See supra* note 1 and accompanying text; *see also* CCA Standards proposing release, *supra* note 5, at 29508 & n.1 (noting the same at the proposing stage).

[99] *See* CME at 2 (citing CCA Standards proposing release, *supra* note 5, at 29516).

[100] *See* CME at 2.

[101] *See* ICEEU at 7–8.

[102] *See id.* at 1–2.

[103] *See id.* at 8.

[104] *See id.* at 2.

[105] *See supra* Part I.A.

[106] *See supra* notes 1–2, 43, and accompanying text.

[107] *See* OSEC at 2.

[108] *See supra* Parts I.A.1 and 2.

supervisory agency. In this regard, such a regulatory structure does not on its face create opportunities for regulatory arbitrage based on any differences between the Commission's proposed approach and rules adopted by the CFTC.

5. Flexible Versus Prescriptive Approaches to Regulation, and the Role of Rule Filings Under Rule 19b–4

One commenter supported the proposed approach that covered clearing agencies be allowed flexibility to use their market experience and understanding of their institutions to shape the implementation of proposed Rule 17Ad–22(e).[109] The commenter emphasized that a flexible and holistic approach would allow a clearing agency to make decisions from a perspective of overall risk management, which may be more productive than a more prescriptive approach.[110] Another commenter was broadly supportive of the proposed rules, noting that the rules provide covered clearing agencies with the necessary flexibility to design and structure their policies and procedures to take into account the differences among clearing agencies.[111] The commenter expressed the view that the Commission generally achieved the appropriate balance between taking a principles-based approach (providing clearing agencies with flexibility) and a more prescriptive, granular approach (limiting a clearing agency's discretion).[112] The commenter also expressed the belief that the precise form of the written policies and procedures required by proposed Rule 17Ad–22(e) should be a matter for the clearing agency to determine, and the commenter listed among such policies and procedures the following: Service guides, operational agreements, compliance procedures, link agreements, and protocols.[113] A third commenter, in contrast, was concerned that the proposed rules rely inordinately on internal risk testing and standards rather than a clear set of external, regulatory demands.[114] In the commenter's view, financial firms often view their policies and procedures as mere inconveniences.

The Commission does not believe that policies and procedures established by covered clearing agencies and required pursuant to Rule 17Ad–22(e) can or would be viewed as ''mere inconveniences.'' In proposing Rule 17Ad–22(e) the Commission stated—and continues to believe—that it is important for covered clearing agencies to use their experience and understanding of the markets they serve to shape the rules, policies, and procedures implementing proposed Rule 17Ad–22(e).[115] Nonetheless, as discussed above, Rule 17Ad–22(e) provides the Commission with a uniform set of requirements against which a covered clearing agency can be monitored, inspected, and examined. Additionally, the Commission notes that, in using its experience to shape the policies and procedures that implement Rule 17Ad–22(e), a covered clearing agency must at all times comply with the requirements of both Section 19 of the Exchange Act and the rules and regulations thereunder for SROs, as well as, for designated clearing agencies, the advance notice requirements of the Clearing Supervision Act and the rules and regulations thereunder.[116] Under Section 19(g) of the Exchange Act, a registered clearing agency (as an SRO) must comply with its own rules and, absent reasonable justification or excuse, enforce compliance with its own rules by its participants.[117]

One of the above commenters further stated that there should be no change in the requirement for filing proposed rule changes under Rule 19b–4 under the Exchange Act, and noted that not all written policies and procedures that would be adopted by a clearing agency in compliance with the proposed rule would be the subject of rule filings under Rule 19b–4.[118] The Commission notes that the amendments to Rule 17Ad–22 do not alter the definition of a rule or a proposed rule change under the Exchange Act, nor do the amendments change a registered clearing agency's obligation to file proposed rule changes under Rule 19b–4.[119]

6. Consistency With the PFMI

Five commenters generally supported the Commission's proposed approach at least in part because they believed it would reflect consistency with the PFMI, as described further below.

One commenter supported the Commission's efforts to update its rules for clearing agencies to take into account the PFMI and to provide support for determinations by non-U.S. banking regulators that covered clearing agencies satisfy the requirements for QCCP status under the BCBS capital framework.[120] The commenter expressed the belief that it would be beneficial for the Commission's rules to recite the Commission's intent to establish standards for covered clearing agencies that are consistent with the PFMI and to interpret them in that context so long as it does not result in inconsistency with the Exchange Act or other Commission regulations, noting that the CFTC included such provision in its regulations for systemically important derivatives clearing organizations (''SIDCOs'').[121] In this regard, the commenter noted that one of the elements of the QCCP definition under the BCBS capital framework is that the relevant regulator has ''publicly indicated'' that it applies to a CCP, on an ongoing basis, domestic rules and regulations that are consistent with the PFMI.[122] As previously discussed, the Commission has publicly indicated that, in developing Rule 17Ad–22(e), the Commission has, among other things, considered the relevant international standards, including the PFMI.[123] The Commission also believes, as previously discussed in Part I.A.5, that the requirements applicable to clearing agencies set forth in the Exchange Act and the rules thereunder, including the rules adopted today, are consistent with the PFMI, and that the rules set forth below are a continuation of the Commission's active effort to foster the development of the national clearance and settlement system consistent with the requirements of the Exchange Act.

A second commenter similarly supported the Commission's proposal to adopt enhanced regulatory standards that are consistent with the PFMI and that would facilitate the ability of covered clearing agencies to be considered QCCPs.[124] A third commenter welcomed the efforts of the Commission to implement standards for clearing agencies that are consistent with the PFMI.[125] A fourth commenter noted that enhanced standards are necessary to ensure that the Commission's regulation of CCPs is consistent with international standards, including the PFMI—which serves as a

[109] *See* OCC at 3.

[110] *See id.* at 4.

[111] *See* DTCC at 3.

[112] *See id.*

[113] *See* DTCC at 12–13.

[114] *See* OSEC at 2.

[115] *See* CCA Standards proposing release, *supra* note 5, at 29517.

[116] *See supra* Parts I.A.1 and 2.

[117] *See* 15 U.S.C. 78s(g).

[118] *See* DTCC at 13; *see also supra* notes 11–13 and accompanying text (providing an overview of the requirement to submit proposed rule changes to the Commission for review).

[119] *See supra* note 12 and accompanying text.

[120] *See* ISDA at 1.

[121] *See* ISDA at 1–2 & n.4 (citing CFTC requirements at 17 CFR 39.40).

[122] *See id.* at 1.

[123] *See supra* notes 1–2 and accompanying text; *see also* CCA Standards proposing release, *supra* note 5, at 29508 & n.1.

[124] *See* LCH at 2.

[125] *See* ICEEU at 1.

prerequisite to obtaining QCCP status under the BCBS capital framework—and CPSS–IOSCO's consultative report *Recovery of Financial Market Infrastructures* (''Consultative Recovery Report'').[126]

A fifth commenter noted that the Commission's approach differs from the PFMI in some areas (*e.g.,* segregation and portability and liquidity risk), reflecting the nature of the securities markets and the particular requirements of the Exchange Act.[127] The commenter supported this approach because covered clearing agencies need to have appropriate flexibility to implement timely modifications to relevant parameters, assumptions, and approaches. The commenter also expressed the belief that the Commission has generally struck the appropriate balance with respect to incorporating the PFMI principles and the level of granular requirements thereunder.[128]

A sixth commenter, in contrast to the above commenters, urged the Commission to adopt the key considerations of each principle identified in the PFMI and to strengthen the proposed rules to affirmatively require robust standards and procedures that ensure accountability, independence, and financial stability.[129] To the extent that the commenter identified a particular key consideration that the Commission should include as a requirement in Rule 17Ad–22(e), it is discussed and addressed in Part II.C. As a general matter, the Commission believes that the requirements applicable to clearing agencies set forth in the Exchange Act and the rules thereunder, including the rules adopted today, are consistent with the PFMI. The Commission also believes Rule 17Ad–22(e) achieves the appropriate balance between imposing new requirements on covered clearing agencies and allowing each covered clearing agency, subject to its obligations and responsibilities as an SRO under the Exchange Act, to design its policies and procedures pursuant to Rule 17Ad–22(e). This approach is consistent with the Commission's existing approach under Rules 17Ad–22(b) and (d) and recognizes that each registered clearing agency has different organizational and operating structures and clears distinct products that warrant a tailored approach to governance and risk management respectively. The Commission notes that such a policies and procedures approach is also consistent with the Commission's existing regulation of SROs generally.[130] In addition, in the discussion of each final rule under Rule 17Ad–22(e) in Part II.C, the Commission has provided guidance based on the key considerations in the PFMI.

7. Other Comments

The Commission also received several comments that were not directed to the substance of the CCA Standards proposal itself. These comments recommended study and rulemaking beyond the scope of the proposed amendments to Rule 17Ad–22 and Rule 17Ab2–2.[131]

II. Description of the Amendments to Rule 17Ad–22 and Rule 17Ab2–2

Below is a discussion of the amendments to Rule 17Ad–22 and Rule 17Ab2–2. Part II.A discusses the scope of new Rule 17Ad–22(e). Part II.B discusses the Commission's principles-based approach to developing the requirements in Rule 17Ad–22(e). Part II.C discusses the requirements for covered clearing agencies under new Rule 17Ad–22(e) and the definitions that the Commission is adopting in Rule 17Ad–22(a). Part II.D discusses new Rule 17Ab2–2, Part II.E discusses new Rule 17Ad–22(f), and Part II.F discusses the amendment to Rule 17Ad–22(d). Part II.G discusses the effective and compliance dates.[132]

A. Scope of Rule 17Ad–22(e)

To facilitate the approach to clearing agency regulation described in Part I.B, the Commission proposed to add five definitions to Rule 17Ad–22(a) to identify those clearing agencies that would be subject to the requirements in Rule 17Ad–22(e). First, the Commission proposed to define ''financial market utility'' as defined in Section 803(6) of the Clearing Supervision Act.[133] Second, the Commission proposed to define ''designated clearing agency'' as a clearing agency registered with the Commission under Section 17A of the Exchange Act that is designated as systemically important by the FSOC and for which the Commission is the supervisory agency as defined in Section 803(8) of the Clearing Supervision Act.[134] Third, the Commission proposed to define ''clearing agency involved in activities with a more complex risk profile'' to mean a clearing agency registered with the Commission under Section 17A of the Exchange Act and that either (i) provides CCP services for security-based swaps or (ii) has been determined by the Commission to be involved in activities with a more complex risk profile (''complex risk profile clearing agency''), either at the time of its initial registration or upon a subsequent determination by the Commission pursuant to proposed Rule 17Ab2–2. Fourth, the Commission also proposed to define ''security-based swap'' to mean security-based swap as defined in Section 3(a)(68) of the Exchange Act.[135] The Commission received no comments regarding these four definitions. The Commission is modifying the definition of ''clearing agency involved in activities with a more complex risk profile'' to strike ''and'' because it is unnecessary. The Commission is adopting the remaining three definitions as proposed.[136]

[126] *See* The Clearing House at 1–2. The Commission notes that, since the comment letter was submitted, CPMI–IOSCO has published a final report on this topic. *See supra* note 41 (citing to the final report).

[127] *See* DTCC at 3.

[128] *See id.*

[129] *See* Better Markets at 4–5.

[130] In the Commission's experience, proposed rule changes of the type necessary to implement the rules would generally entail changes to the SRO's written policies and procedures that must be submitted for Commission review and approval pursuant to Rule 19b–4 under the Exchange Act. *See supra* note 12.

[131] *See* ISDA at 4, 6 (recommending that the Commission (i) develop, in a subsequent rulemaking, more detailed rules that require customer-by-customer accounting of the collateral value held by the covered clearing agency with respect to security-based swap positions and impose corresponding limitations on the value of collateral that the covered clearing agency may apply towards losses on other customers' positions carried by the participant and (ii) commit to a study of insolvency of security-based swap clearing agencies with the goal of identifying uncertainties, proposing solutions, and fostering public discussion); CFA Institute at 2 (expressing general concern regarding the central clearing of OTC swaps and derivatives, urging the Commission to take caution in regulating OTC swaps and derivatives, and asking the Commission to consider whether to require all OTC contracts, whether standardized or not, to be cleared); SRC at 2 (stating that the SEC and CFTC continue to lack the resources available to other self-funded financial regulators, creating structural weakness). The Commission also received one comment letter that recommended modifications to Rule 17Ad–22(e)(14) and other rulemaking outside the scope of Rule 17Ad–22. *See* AMG–ICI at 8–12.

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

[133] *See* 12 U.S.C. 5462(6) (defining ''financial market utility'' pursuant to the Clearing Supervision Act); *supra* note 20 (further discussing FMUs under the Clearing Supervision Act).

[134] Rule 17Ad–22 does not currently apply to entities operating pursuant to an exemption from clearing agency registration.

[135] *See* 15 U.S.C. 78c(a)(68).

[136] The Commission notes that, because of modifications to Rule 17Ad–22(a), the definition of ''financial market utility'' is being moved to Rule 17Ad–22(a)(7), the definition of ''designated

Continued

Fifth, the Commission proposed to define ''covered clearing agency'' to mean a designated clearing agency, a complex risk profile clearing agency for which the CFTC is not the supervisory agency, or any clearing agency determined to be a covered clearing agency by the Commission pursuant to proposed Rule 17Ab2–2. Commenters expressed several views on the entities and activities that should be included within the ''covered clearing agency'' definition. In Part I.C.4 above, the Commission considered comments focused generally on the potential for duplicative or inconsistent regulation as a result of the proposed scope of Rule 17Ad–22(e). Below is a discussion of comments directed to aspects of the definition of ''covered clearing agency.'' [137] Comments directed to the scope of proposed Rule 17Ab2–2(a), which would have provided procedures for the Commission to determine whether a registered clearing agency is a covered clearing agency, are discussed separately in Part II.D. In light of those comments, the Commission has determined not to adopt proposed Rule 17Ab2–2(a), and therefore, in adopting the definition of ''covered clearing agency,'' the Commission has also determined to not adopt the proposed prong regarding determinations pursuant to Rule 17Ab2–2.[138] Accordingly, the Commission is adopting the definition of ''covered clearing agency'' to mean a designated clearing agency or a complex risk profile clearing agency for which the CFTC is not the supervisory agency as defined in the Clearing Supervision Act.[139]

1. As Applied to CCPs Generally

Four commenters supported applying enhanced standards to CCPs generally.[140] One commenter noted that the mandatory clearing of OTC derivatives introduced following the 2008 financial crisis has heightened the need for enhanced standards for CCPs.[141] A second commenter suggested that the Commission apply Rule 17Ad–22(e) to all clearing agencies to reduce the risk of failure and the problems such a failure would cause for investors.[142] In so suggesting, the commenter cited to the size of the derivatives markets and the potential for disruption and systemic risk that those markets may have on covered clearing agencies.[143] A third commenter similarly cited to the risks associated with derivatives trading that has shifted into clearing agencies.[144] With respect to these three commenters, the Commission notes that, according to the ''covered clearing agency'' definition, a CCP is a covered clearing agency in either of the following circumstances: (i) If the CCP is a designated clearing agency; or (ii) if the CCP is a complex risk profile clearing agency,[145] unless the CFTC is the supervisory authority under the Clearing Supervision Act. Accordingly, under the ''covered clearing agency'' definition, five of the six active CCPs registered with the Commission will be a covered clearing agency subject to Rule 17Ad–22(e). The Commission believes that it is important to take an initial step to establish coverage of Rule 17Ad–22(e) over this group of clearing agencies and is adopting the ''covered clearing agency'' definition with only the modification described above regarding Rule 17Ab2–2. However, in consideration of these comments, the Commission is proposing in a separate release to amend the definition of ''covered clearing agency'' so that it would apply to any registered clearing agency that, among other things, provides CCP services.[146] Under this proposed definition, any CCP registered with the Commission would be a covered clearing agency.

The fourth commenter recommended that any provision of the proposed rules that reflects best practices should be applied to all registered clearing agencies, CCPs or otherwise.[147] This comment has been previously addressed in Part I.C.2.[148]

2. As Applied to Security-Based Swap Clearing Agencies

In contrast, three commenters sought to limit the scope of Rule 17Ad–22(e) further than was proposed.[149] The Commission believes these arguments are unpersuasive, for the reasons described below.

One of these commenters expressed the view that Rule 17Ad–22(e) should not apply to complex risk profile clearing agencies but only to designated clearing agencies, and that applying the enhanced regime of Rule 17Ad–22(e) to non-designated clearing agencies undermines the significance of being designated, which the commenter stated is inconsistent with the distinction Congress sought to create between systemically important clearing agencies and other non-designated clearing agencies.[150] The commenter stated that the Commission should take an approach similar to the CFTC, whereby non-designated clearing agencies could choose to ''opt-in'' to the enhanced requirements of Rule 17Ad–22(e) if desired. The commenter further stated that security-based swap clearing agencies should not automatically fall within the definition of a covered clearing agency, stating that it is not clear security-based swap clearing inherently raises issues that require enhanced standards as compared to other clearing activities.[151]

The Commission believes, however, that it is important to establish coverage of the enhanced standards of Rule 17Ad–22(e) for CCPs that clear security-based swaps. In the Commission's view, in addition to designations of systemic importance under the Clearing Supervision Act, Title VII of the Dodd-Frank Act sets out separate and equally important objectives. As described above, Title VII provides the Commission with enhanced authority to regulate security-based swaps, and, among other things, requires the Commission to adopt rules with respect to security-based swap clearing agencies.[152] The Commission previously has noted that Title VII's mandate for the central clearing of security based swaps, wherever possible and appropriate, reinforces the need for proper risk management by security-

clearing agency'' is being moved to Rule 17Ad–22(a)(6), the definition of ''security-based swap'' is being moved to Rule 17Ad–22(a)(15). The definition of ''clearing agency involved in activities with a more complex risk profile'' remains in Rule 17Ad–22(a)(4). *See infra* Part VI.

[137] The Commission notes that, because of modifications to Rule 17Ad–22(a), the definition of ''covered clearing agency'' is being moved to Rule 17Ad–22(a)(5). *See infra* Part VI.

[138] *See infra* Part II.D.2.a.

[139] In addition, as first noted in Part 0, in a separate release the Commission is proposing to modify the definition of 'covered clearing agency' to include all CCPs, CSDs, and SSSs. *See* CCA Definition proposing release, *supra* note 82, at 25–26.

[140] *See* CFA Institute at 2; OSEC at 3; The Clearing House at 1; DTCC at 4 (recommending that any provision of the proposed rules that reflects best practices should be applied to all registered clearing agencies).

[141] *See* The Clearing House at 1.

[142] *See* CFA Institute at 2.

[143] *See id.* The commenter also suggests that, to account for these risks, the Commission reconsider whether all OTC contracts, whether standardized or not, ought to clear through covered clearing agencies. The Commission notes that whether OTC contracts ought to be subject to mandatory clearing requirements was not a subject of this rulemaking during the proposing stage, and the Commission therefore believes this comment is outside the scope of this rulemaking.

[144] *See* OSEC at 3.

[145] As previously discussed, security-based swap clearing agencies are a subset of complex risk profile clearing agencies under Rule17Ad–22(a)(5). *See supra* note 59.

[146] *See* CCA Definition proposing release, *supra* note 82, at 25–43.

[147] *See* DTCC at 4.

[148] *See supra* notes 77–78 and accompanying text.

[149] *See* CME, ICEEU, and LCH.

[150] *See* ICEEU at 3.

[151] *See id.* at 3–4.

[152] *See supra* note 17 and accompanying text.

based swap clearing agencies to ensure the stability of the U.S. securities markets.[153] The requirements in Rule 17Ad–22(e), among other things, help to mitigate the risks inherent in the functions of a CCP, including a CCP for security-based swaps, and therefore the Commission believes that requiring registered clearing agencies performing such CCP functions to comply with Rule 17Ad–22(e), in addition to those registered clearing agencies that are designated clearing agencies, is consistent with the framework of both Title VII and the Clearing Supervision Act. In light of these considerations, the Commission does not believe that an opt-in regime is appropriate for security-based swap clearing agencies.

In the alternative, the commenter stated that application of Rule 17Ad–22(e) should be limited to the particular business or product lines of a covered clearing agency that warrant application of the higher standards.[154] The commenter noted that many clearing agencies clear a range of products, some of which are within and others outside of the Commission's jurisdiction. According to the commenter, for those clearing agencies only some activities, such as the clearing of security-based swaps, should trigger application of Rule 17Ad–22(e), and therefore the requirements in Rule 17Ad–22(e) should be limited to those business or product lines. The commenter noted that this would be applicable where the activity is substantially separate from other business lines, such as through the use of a separate guaranty fund. The commenter recognized that certain standards may not be easily applied to a particular business line,[155] but noted that a categorical rule that does not take into account the scope of a particular clearing agency's security-based swap activities or the risks presented by them raises concerns.[156]

Rule 17Ad–22(e) applies to a covered clearing agency and does not make distinctions among the various product or business lines that the covered clearing agency manages. In the Commission's experience, many aspects of a clearing agency's operations are managed at the entity level (*i.e.,* as a clearing agency) irrespective of product or business line. For example, the clearing agency's legal framework, governance, risk management framework, financial risk management, and operational risk management are determined as part of the policies and procedures of the entity (*i.e.,* the clearing agency), and therefore these areas are not separated out to apply exclusively to a particular business or product line.[157] Thus, requirements in Rule 17Ad–22(e) directed to these aspects of a clearing agency's operations generally could not be easily applied only to a particular business or product line when the clearing agency's operations and risk management are organized at the entity level. The Commission believes that this approach avoids unnecessary complexity and fragmentation in the policies and procedures of a clearing agency. The operations and risk management of a covered clearing agency are closely interrelated across various activities in which the clearing agency engages, and within Rule 17Ad–22(e), the requirements have significant interactions among each other, with some building upon others or complementing others. The Commission believes that this generally also supports a holistic application of the requirements in Rule 17Ad–22(e).

However, the Commission understands that some covered clearing agencies may manage certain activities and risk at an entity level while others manage the same activities and risk at a business or product level. Covered clearing agencies retain the ability to distinguish among their products in crafting their policies and procedures. Because a covered clearing agency's practices are diverse and difficult to generalize, the Commission has sought to address such concerns in other ways, such as by streamlining the process for rule filings under Rule 19b-4 filed by dually registered clearing agencies.[158] Specifically, for rule filings that primarily concern the clearing operations of a registered clearing agency that are not linked to securities clearing operations but only to clearing of products under the authority of the CFTC, the Commission provides a streamlined process for such rule filings to become effective upon filing with the Commission.[159]

Additionally, two commenters urged the Commission to exclude non-U.S. security-based swap clearing agencies registered with the Commission from the definition of ''covered clearing agency'' when they are regulated in their home jurisdictions under a regime that is consistent with the PFMI.[160] The commenters stated that this approach would be consistent with the Commission's treatment under Rule 17Ad–22(e) of dually registered SIDCOs for which the CFTC is the supervisory agency under the Clearing Supervision Act and believe a similar exclusion would be appropriate for clearing agencies subject to other regulatory frameworks.[161] The commenters further stated that any decision to apply the enhanced standards for covered clearing agencies should take into account whether, and the extent to which, the clearing agency is already subject to similar or comparable standards under other regulation,[162] noting that recognizing existing foreign regulation is consistent with the Commission's proposals on regulation of cross-border activities generally.[163] In the commenters' view, the approach set out in the Commission's Cross-Border proposing release sensibly balanced the interests of the Commission with those of foreign regulators and appropriately considered the costs and benefits of adding additional regulatory requirements where the home country regulation is comparable.

In this regard, one commenter expressed the belief that deference to home country regulation is appropriate because both Rule 17Ad–22(e) and applicable U.K. regulations are consistent with the PFMI, noting that U.S. and U.K. regulators thus have generally aligned interests.[164] In particular, the commenter cited, as comparable regulation to Rule 17Ad–22(e), regulation by the Bank of England under existing U.K. legislation and, for those clearing agencies that have been granted authorization as a CCP under EMIR, the regulations under EMIR.[165] A second commenter echoed this viewpoint, noting that EMIR is consistent with the PFMI.[166] Finally, one of the commenters stated that, in areas where the Commission determines that the home country regulation is not comparable and determines that additional regulation may be appropriate, any incremental regulation

[153] *See* CCA Standards proposing release, *supra* note 5, at 29576.

[154] *See* ICEEU at 7.

[155] *See id.* The commenter further states that this approach will help reduce the likelihood of clearing agencies being subject to inconsistent regulation. The Commission addressed this aspect of the comment above in Part I.C.4.

[156] *See* ICEEU at 7.

[157] *See infra* Parts II.C.1–7, 17 (discussing each, respectively).

[158] *See* Exchange Act Release No. 34–69284 (Apr. 3, 2013), 78 FR 21046 (Apr. 9, 2013) (''Dually Registered CA release'').

[159] *See id.* at 21047.

[160] *See* ICEEU at 5–6; LCH at 3. The Commission has previously addressed more general comments regarding the risk of duplicative or inconsistent regulation above in Part I.C.4.

[161] *See* ICEEU at 5–6; LCH at 3.

[162] *See id.*

[163] *See* ICEEU at 6; LCH at 3 (citing Exchange Act Release No. 34–69490 (May 1, 2013), 78 FR 30968, 31039 (May 23, 2013) (''Cross-Border proposing release'')).

[164] *See* ICEEU at 6.

[165] *See id.*

[166] *See* LCH at 3.

under Rule 17Ad–22 should be targeted to those areas of difference.[167]

One commenter further stated that, at a minimum, a clearing agency subject to Rule 17Ad–22(e) in addition to comparable home regulation is subject to duplicative regulation, which is costly for both the clearing agency and its regulators and serves no meaningful regulatory purpose.[168] The commenter also stated that it is critical that a clearing agency not be subject to inconsistent regulations in different jurisdictions, noting that such inconsistencies can arise not only when relevant regulations are different but also when regulators interpret substantially similar regulations in different ways. As a result, the commenter stated that a clearing agency can still be significantly burdened by being subject to two substantially similar sets of regulations, and in its view, the commenter expressed the view that it would be preferable to allow clearing agencies, where possible, to be subject to a single set of standards.[169] The other commenter also supported an approach that would minimize duplicative requirements on those registered clearing agencies subject to both Rule 17Ad–22(e) and home regulation, while ensuring that all registered clearing agencies that clear security-based swaps are regulated in a manner that is consistent with the PFMI.[170]

In response to the above comments, the Commission does not believe that a non-U.S. security-based swap clearing agency regulated in its home jurisdiction, under a regime consistent with the PFMI, should be excluded, as a threshold matter, from designation as a covered clearing agency. As previously discussed in Part I.C.4, the Commission's intent with respect to Rule 17Ad–22(e) is, in part, to take another incremental step under Rule 17Ad–22 to ensure that risks inherent in certain CCP activity, including the central clearing of security-based swaps, are appropriately managed consistent with the purposes of the Exchange Act, the Clearing Supervision Act, and Title VII of the Dodd-Frank Act. The Commission has, through Rule 17Ad–22, sought to apply requirements commensurate and appropriate to the risk posed by the clearing agency functions and activities specific to covered clearing agencies as they exist in, and serve, the U.S. securities markets. The Commission acknowledges that other rules and regulations may apply to a covered clearing agency that are similar in scope or purpose to Rule 17Ad–22(e). However, the presence of similar regulations does not negate the Commission's obligation to ensure that risk in the U.S. securities markets is appropriately managed consistent with the purposes of the Exchange Act, the Clearing Supervision Act, and Title VII of the Dodd-Frank Act.

Further, because Rule 17Ad–22(e) and other comparable regulations are based on the same international standards,[171] the Commission believes the potential for any inconsistent regulation is low. Indeed, applying Rule 17Ad–22(e) to a covered clearing agency that is also subject to comparable regulation consistent with the PFMI in its home jurisdiction should improve harmonization between the Commission's regulatory regime and that of the home jurisdiction, which would reduce the burdens associated with the presence of similar regulation under multiple regulatory regimes. In addition, because clearing agency practices are diverse and difficult to generalize, the Commission has sought to address concerns about duplicative regulation in other ways, such as through streamlining the process for rule filings under Rule 19b-4 filed by clearing agencies dually registered with the Commission and the CFTC so that rule filings that do not pertain to securities clearing operations become effective upon filing with the Commission, without pre-effective notice and opportunity for comment.[172] In addition, Part I.A.6 above discusses the process by which the Commission could consider the attendant facts and circumstances in assessing the application of Rule 17Ad–22(e) to a non-U.S. covered clearing agency that is subject to similar regulation in its home jurisdiction.

3. As Applied to Dually Registered Clearing Agencies

One commenter noted that the proposed definition is sufficiently broad to enable the Commission to include SIDCOs. The commenter stated that the potential for a SIDCO to be determined to be a covered clearing agency is inconsistent with the Commission's acknowledgment of the purposes of the Clearing Supervision Act and there being duplicative requirements for some dually registered entities.[173] The commenter recommended that the Commission expressly exclude from the definition of ''covered clearing agency'' those clearing agencies for which the CFTC is the supervisory agency pursuant to the Clearing Supervision Act. The Commission notes that the definition of ''covered clearing agency'' does expressly exclude those clearing agencies for which the CFTC is the supervisory agency. As previously discussed, in a separate release, the Commission is proposing to amend the definition of a covered clearing agency, and addresses the potential effects of the proposed amendment on clearing agencies dually registered with the CFTC.[174]

B. Principles-Based Approach to Rule 17Ad–22(e)

Rule 17Ad–22(e) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures that address a variety of issues, as described in detail below. The Commission's approach sets forth requirements that a covered clearing agency must achieve when developing its written policies and procedures. With a number of exceptions, Rule 17Ad–22(e) does not prescribe a specific tool or arrangement to achieve its requirements. The Commission believes that when determining the content of its policies and procedures, each covered clearing agency must have the ability to consider its unique characteristics and circumstances, including ownership and governance structures, effect on direct and indirect participants, membership base, markets served, and the risks inherent in products cleared. This ability, however, is subject to the requirements of the SRO rule filing and advance notice processes, which provide some opportunities for the public and participants to comment on the covered clearing agency's rules, policies, and procedures.

The Commission does not believe that a granular or prescriptive approach to its regulation of covered clearing agencies would be appropriate, nor would such an approach ensure that a covered clearing agency does not become a transmission mechanism for systemic risk. Moreover, the Commission believes that the primarily principles-based approach reflected in Rule 17Ad–22(e) will help a covered clearing agency continue to develop policies and procedures that can effectively meet the evolving risks and challenges in the markets that the covered clearing agency serves. It has

[167] *See* ICEEU at 6.

[168] *See* ICEEU at 5.

[169] *See id.*

[170] *See* LCH at 3.

[171] *See supra* notes 1–2, 43, and accompanying text.

[172] *See* Dually Registered CA release, *supra* note 158, at 21047.

[173] *See* CME at 3.

[174] *See* CCA Definition proposing release, *supra* note 82, at 39–42.

been the Commission's experience that particular securities markets (*e.g.,* equities, fixed income, and options) have their unique conventions, characteristics, and structure that are best addressed on a market-by-market basis. The Commission recognizes that a less prescriptive approach can help promote efficient and effective practices and encourage regulated entities to consider how to manage their regulatory obligations and risk management practices in a way that complies with Commission rules, while considering the particular characteristics of their business, and believes the approach reflected in across Rule 17Ad–22, including new paragraph (e), is consistent with this approach. Such a principles-based approach also is consistent with the approach taken in Rule 17Ad–22(d).[175]

As a general matter, the Commission believes that using broadly prescriptive requirements that, on an absolute and ex ante basis, prohibit a covered clearing agency's use of particular tools makes it more difficult for a covered clearing agency to maintain flexibility, subject to its obligations and responsibilities as an SRO under the Exchange Act, to address the ever-evolving challenges and risks inherent in the securities markets. Accordingly, the Commission believes that the approach adopted here appropriately preserves such flexibility for a covered clearing agency, and the broader market, to respond to particular risks or issues arising in its operations in an effective manner.

Finally, in certain instances, commenters have suggested that the Commission either prohibit or endorse a covered clearing agency's use of particular tools or rules, policies, or procedures. As discussed in more detail below, the Commission generally declines to take such an approach because it is inconsistent with the principles-based approach reflected in Rule 17Ad–22(e). Instead, the Commission's approach to Rule 17Ad–22(e) is designed to allow the Commission to consider particular tools in the context of the specific facts and circumstances facing a clearing agency in light of its governance structure, the products it clears, and the markets it serves. In addition, in consideration of the issues raised by commenters, the Commission has provided guidance consistent as to what a covered clearing agency generally should consider when developing and maintaining its policies and procedures consistent with Rule 17Ad–22(e).

C. Requirements for Covered Clearing Agencies Under Rule 17Ad–22(e)

Below is a discussion of each of the requirements in new Rule 17Ad–22(e), the related new definitions in Rule 17Ad–22(a), and the comments received by the Commission that were targeted to specific elements of those requirements and definitions.[176] As previously noted, the Commission is adopting Rule 17Ad–22(e) and the related definitions in Rule 17Ad–22(a) substantially as proposed.[177] To the extent the Commission is adopting any modifications either to the requirements in Rule 17Ad–22(e) or the definitions in Rule 17Ad–22(a), such modifications are discussed in detail below. Moreover, the below sections are organized by the particular rules under Rule 17Ad–22(e), with discussion of the definitions incorporated into the overall substantive discussion of each particular rule. Further, in the discussion of each final rule below, the Commission has included guidance that a covered clearing agency generally should consider as it develops and maintains its rules, policies, and procedures in compliance with Rule 17Ad–22(e). As previously noted, this guidance is based, in part, on the key considerations in the PFMI.[178] The Commission intends for this guidance to be read in conjunction with the relevant requirements set forth in Rule 17Ad–22(e), so as to provide further explanation of the types of issues a covered clearing agency generally should consider when implementing those requirements. The Commission does not intend for this guidance to expand, diminish, or otherwise modify the requirements under Rule 17Ad–22(e).

1. Rule 17Ad–22(e)(1): Legal Risk

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(1) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[179] The Commission proposed Rule 17Ad–22(a)(20) to define ''transparent'' to mean that relevant documentation is disclosed, as appropriate, to the Commission and other relevant authorities, to clearing members and customers of clearing members, to the owners of the covered clearing agency, and to the public, to the extent consistent with other statutory and Commission requirements.[180]

b. Comments Received and Commission Response

i. Use of Legal Opinions

One commenter supported the Commission's proposal that each covered clearing agency have policies and procedures that provide for a well-founded, clear, transparent, and enforceable legal basis for each of its activities in all relevant jurisdictions, and noted that legal uncertainty can increase risk.[181] A second commenter stated that the Commission explicitly should require a covered clearing agency to obtain, on at least an annual basis, legal opinions on the enforceability of structures used to contain losses within a clearing service upon the insolvency of the clearing service or the covered clearing agency, including closeout netting, right of set-off, classification as a repurchase-style transaction, and collateral protection opinions, and then disclose these opinions to its participants.[182]

In satisfying the requirements in Rule 17Ad–22(e)(1), a covered clearing agency could include within its policies and procedures a requirement regarding legal opinions as to certain matters, such as the enforceability of structures used to contain losses within a clearing service upon the insolvency of the clearing service or the covered clearing agency. The use of legal opinions may be one consideration but compliance with Rule 17Ad–22(e)(1) ultimately requires that the covered clearing agency's policies and procedures, taken as a whole, to be reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. Whether legal opinions are useful to a covered clearing agency and, if so, what form they ought to take or subject matter they ought to address, may vary on a case-by-case

[175] *See, e.g.,* Clearing Agency Standards adopting release, *supra* note 5, at 66231–32 (noting, with respect to credit exposures and margin requirements under Rule 17Ad–22(d), that a less prescriptive and more flexible rule sets a more appropriate baseline standard and stressing the importance of considering different markets characterized by different trading patterns, volumes, liquidity, transparency and other unique market characteristics when determining the appropriate risk management mechanisms for a particular clearing agency).

[176] Comments that were of a general nature have been discussed in Part I.C.

[177] *See supra* Part I.B.

[178] *See supra* Part I.C.6.

[179] *See* CCA Standards proposing release, *supra* note 5, at 29519–20.

[180] *See id.* In addition, the Commission notes that the definition of ''transparent'' is also used in Rules 17Ad–22(e)(2) and (10). *See infra* Parts II.C.2 and 10.

[181] *See* CFA Institute at 5.

[182] *See* The Clearing House at 18.

basis depending on the particular facts and circumstances. Because the appropriate use of legal opinions will vary on a case-by-case basis, the Commission does not believe it is appropriate to modify Rule 17Ad–22(e)(1) to include a specific requirement for legal opinions addressing particular matters.[183]

ii. Definition of ''Transparent''

One commenter, although supportive of the Commission's proposal to require covered clearing agencies to develop policies and procedures to fulfill the requirements of Rule 17Ad–22(e), noted that, because some policies and procedures may include commercially sensitive information, it would be inappropriate to require a covered clearing agency to disclose all of its policies and procedures. The commenter stated that it would be helpful for the language of the rules to explicitly reflect this reality, which was acknowledged by the Commission in the preamble to the proposed rules.[184]

The Commission acknowledges that disclosure of certain information, for example, proprietary or commercially sensitive information, may not be appropriate to be disclosed publicly or to all parties. Because the definition of ''transparent'' is limited to relevant documentation, as appropriate, and does not conflict with other statutory and Commission requirements on confidentiality and disclosure, it does not lead to the concerns noted by the commenter. The Commission already noted in proposing the rule that certain types of information, such as confidential information, may not be appropriate for disclosure in some circumstances and to some parties. In addition, the level of disclosure required will necessarily depend on the particular facts and circumstances. The definition of ''transparent'' provides a covered clearing agency with some discretion to develop written policies and procedures addressing disclosures and the use of confidential or proprietary information, consistent with statutory and Commission requirements. To improve clarity, the Commission is modifying the definition of ''transparent'' to mean for the purposes of paragraphs (e)(1), (2), and (10) of this section, to the extent consistent with other statutory and Commission requirements on confidentiality and disclosure, that documentation required under paragraphs (e)(1), (2), and (10) is disclosed to the Commission and, as appropriate, to other relevant authorities, to clearing members and to customers of clearing members, to the owners of the covered clearing agency, and to the public. Below, the Commission provides additional guidance regarding the definition of ''transparent.''

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(1) as proposed and adopting the definition of ''transparent'' as described above but moving it to Rule 17Ad–22(a)(19) because of other modifications to Rule 17Ad–22(a).[185] Because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(1), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures to address legal risk:

- Whether its policies and procedures for legal risk provide a high degree of certainty for each material aspect of its activities in all relevant jurisdictions;
- whether its rules, policies and procedures, and contracts are clear, understandable, and consistent with relevant laws and regulations;
- whether it can articulate the legal basis for its activities to the relevant authorities, participants, and, where relevant, participants' customers, in a clear and understandable way;
- whether it has rules, policies and procedures, and contracts that are enforceable in all relevant jurisdictions, and whether it has a high degree of certainty that actions taken by it under such rules, policies and procedures, and contracts will not be voided, reversed, or subject to stays; and
- whether, if it conducts business in multiple jurisdictions, it can identify and mitigate the risks arising from any potential conflict of laws across jurisdictions.

The Commission notes that a covered clearing agency operating in multiple jurisdictions under Rule 17Ad–22(e)(1) generally should address any conflicts of law issues that it may encounter.[186]

With respect to the definition of ''transparent,'' the Commission notes that certain types of information, such as confidential information, may not be appropriate for public disclosure or disclosure to certain third parties and that confidential information could be reflected in policies and procedures with respect to the security of information technology or other critical systems, such as, for example, as part of business continuity planning. The Commission also notes that generally a covered clearing agency could meet the definition of ''transparent'' by posting relevant documentation to its Web site.

2. Rule 17Ad–22(e)(2): Governance

a. Proposed Rule

As proposed, Rules 17Ad–22(e)(2) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are: clear and transparent; clearly prioritize the safety and efficiency of the covered clearing agency; support the public interest requirements in Section 17A of the Exchange Act and the objectives of owners and participants; and establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities.[187]

b. Comments Received and Commission Response

i. Scope of Interests To Consider

The scope of interests required to be considered as part of Rule 17Ad–22(e)(2)(iii) attracted a range of comments. One commenter conveyed strong support for the Commission's requirement that covered clearing agencies adopt policies and procedures for clear and transparent governance arrangements that prioritize safety and efficiency, noting that decisions made by covered clearing agencies could have an impact on multiple financial markets and jurisdictions.[188] The commenter urged that governance measures should support the objectives of owners and participants and, with respect to certain matters, the public interest. The commenter also noted that a clearing agency's reactions to competition could undermine the safety and soundness of the clearing agency as well as the industry as a whole.[189]

A second commenter sought to clarify that proposed Rule 17Ad–22(e)(2)(iii) would not encompass the interests of participants' customers and other stakeholders.[190] This commenter expressed the belief that the Commission's proposed approach, in

[183] The Commission notes that every registered clearing agency must keep and preserve at least one copy of all documents as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity. 17 CFR 240.17a–1.

[184] *See id.*

[185] *See infra* Part VI.

[186] In addition, for covered clearing agencies, the ''relevant jurisdiction'' includes the United States and any other jurisdiction where the covered clearing agency operates.

[187] *See* CCA Standards proposing release, *supra* note 5, at 29520–22.

[188] *See* CFA Institute at 6.

[189] *See id.*

[190] *See* OCC at 4–5.

which the objectives of participants' customers and other stakeholders are not explicitly stated in Rule 17ad–22(e)(2)(iii), is consistent with the PFMI.[191] The commenter acknowledged that the Commission and other regulators must consider the interests of indirect participants, but the commenter noted that their interests are adequately addressed through participation of a sufficient number of independent directors or through other means.[192] A third commenter expressed support for the proposed standards, believing that a principles based-formulation is generally appropriate, but the commenter also expressed the belief that proposed Rule 17Ad–22(e)(2) should provide clear processes for consideration of participants' views and involvement of participants in the covered clearing agency's decision-making process.[193]

The Commission believes that the first commenter's concern is addressed by the fact that policies and procedures under Rule 17Ad–22(e)(2) reasonably designed to support the public interest requirements in Section 17A of the Exchange Act generally should consider whether they support the stability of the broader financial system of the United States.[194] For example, as noted by the first commenter, a covered clearing agency could consider the public interest in its response to large scale price moves or position changes.[195]

With respect to the second and third commenters,[196] the Commission is modifying proposed Rule 17Ad–22(e)(2) to include new paragraph (vi), which requires policies and procedures for governance arrangements that consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.[197] Under new paragraph (vi), other relevant stakeholders are persons that access the national system for clearance and settlement indirectly (*e.g.,* institutional and retail investors), entities that rely on the national system for clearance and settlement to effectively provide services to investors and market participants, and other market infrastructures. Other relevant stakeholders currently include, for example, transfer agents, liquidity providers, and other linked market infrastructures, including exchanges, matching service providers, and payment systems. This new paragraph complements Section 17A(b)(3)(C), which requires the rules of a clearing agency to assure fair representation of its shareholders and participants in the selection of its directors and the administration of its affairs.[198] This requirement for fair representation necessarily applies to policies and procedures adopted and maintained by a covered clearing agency pursuant to Rule 17Ad–22(e)(2). Consistent with this requirement, the Commission believes that a covered clearing agency generally should, in selecting its directors and administering its affairs, consider the interests of owners, participants, participants' customers, securities issuers and holders, and other relevant stakeholders to, consistent with the public interest requirements in Section 17A, strike an appropriate balance among the potentially competing views of such other stakeholders represented within a covered clearing agency. As noted by one commenter below, the inclusion of independent directors on the board may be one mechanism for helping to ensure that the relevant views are presented and considered,[199] provided the covered clearing agency's overall corporate governance structure is consistent with the fair representation and public interest requirements in Section 17A of the Exchange Act. The Commission notes, further, that the approach a covered clearing agency may take in considering such views could vary depending on the ownership structure or organizational form of the covered clearing agency. A covered clearing agency operating under a mutualized utility model where losses are fully mutualized among its participant-owners may take a different approach to consider the interests of all the relevant stakeholders compared to a covered clearing agency operating under a different model, such as one where it is owned by another organization, is operated as a for-profit entity, and/or is publicly listed and traded.

ii. Representation on the Board of Directors

Commenters generally supported the requirement in proposed Rule 17Ad–22(e)(2)(iv) that requires members of the board of directors and senior management to have the skills and experience to perform their duties and responsibilities.[200] Multiple commenters, however, advocated for the inclusion of additional requirement related to the board of directors. One commenter urged the Commission to require that covered clearing agencies have public or independent representation on their boards.[201] The commenter also urged the Commission to define independent directors to exclude parties with significant business relationships with the covered clearing agency, cross-directorships, or controlling shareholdings, as well as executives, officers, or employees of the covered clearing agency or its affiliate.[202] Another commenter recommended that the Commission require a covered clearing agency to include representatives of both buy-side and sell-side market participants on the board.[203] The commenter stated that some equities clearing agencies and stock exchanges already include investor representatives on their boards to benefit from a diverse group of market participants.[204] The commenter expressed the view that stakeholder involvement at the board level would minimize conflicts of interest by balancing commercial interests of covered clearing agencies with those of other stakeholders.[205] The commenter also expressed the view that the risk committee of a covered clearing agency should include a wide range of indirect participants, as the customers of clearing members also have an interest in ensuring adequate and diverse stakeholder representation in the covered clearing agency, in addition to transparency in the decision making process.[206]

[191] *See id.* (discussing CFTC Rule 39.32(a)(1)(iv) and, as proposed, FRB Rule 234.3(a)(2)(iii)).

[192] *See id.* at 5.

[193] *See* ISDA at 2; *see also infra* notes 212, 215 and accompanying text (discussing other concerns raised by the commenter).

[194] As previously discussed, the Commission has stated that the public interest is a broad concept that includes contributing to the ongoing development of the U.S. financial system, in particular the national clearance and settlement system contemplated by Section 17A of the Exchange Act, protecting investors, and fostering fair and efficient markets. *See supra* Part II.C.2.a.

[195] *See* CFA Institute at 6.

[196] *See supra* notes 190–193 and accompanying text.

[197] *See* Rule 17Ad–22(e)(2)(vi), *infra* Part VI; *see also infra* Part II.C.2.c.

[198] *See* 15 U.S.C. 78q–1(b)(3)(C).

[199] *See* ICI at 14–15; *see also infra* Part II.C.2.b.ii below (discussing comments regarding public or independent representation on the board of directors).

[200] *See, e.g.,* CFA Institute at 6 (noting that those responsible for the operations of a covered clearing agency should be capable of performing the required decision-making in light of the systemic importance of covered clearing agencies); OCC at 5 (believing that covered clearing agencies are well positioned to determine which individuals have the appropriate experience, skills, incentives, and integrity to discharge their duties and responsibilities in a way that reflects the particular needs of each covered clearing agency).

[201] *See* Better Markets at 7; Fidelity at 3–4; ICI at 14.

[202] *See* Better Markets at 7.

[203] *See* ICI at 14.

[204] *See id.*

[205] *See id.* at 14–15.

[206] *See id.* at 15.

After careful consideration of the comments, the Commission has determined not to modify Rule 17Ad–22(e)(2) to include specific requirements related to public or independent representation on the covered clearing agency's board or risk committee. The Commission believes that new paragraph (vi), previously discussed above, sufficiently addresses the concerns raised by the commenters because it requires specific policies and procedures for governance arrangements that consider the interests of a wide range of market participants. In addition, public representation, combined with clear requirements for the qualifications of the board of directors, could improve the functioning of the board and could be one way to ensure that the covered clearing agency has governance arrangements consistent with the fair representation requirements of Section 17A(b)(3)(C) of the Exchange Act, provided that the covered clearing agency's governance structure, as a whole, is consistent with the fair representation and public interest requirements in Section 17A of the Exchange Act. The Commission is declining to modify Rule 17Ad–22(e)(2) to further specify that a particular director represent the interests of buy-side or sell-side market participants. The Commission notes that public or independent representation are one possible approach to governance that can help ensure consistency with the fair representation and public interest requirements in Section 17A of the Exchange Act. In addition, and for the same reasons, the Commission is declining to modify Rule 17Ad–22(e)(2) to provide further specification regarding business relationships and affiliates because these topics, like the above, are already addressed by the fair representation requirement in Section 17A(b)(3)(C) and the public interest requirements of Section 17A of the Exchange Act.

Separate from the above, one commenter also encouraged the Commission to specify that independent directors must support the objectives of customers and the public, rather than simply the clearing members.[207] The Commission notes that Rule 17Ad–22(e)(2)(iii) requires policies and procedures that support not only the public interest considerations of Section 17A of the Exchange Act but also the objectives of both owners and participants. In addition, the Commission generally believes that the governance arrangements of a covered clearing agency should include consideration of the interests of participants' customers and other stakeholders, and this is why the Commission is modifying proposed Rule 17Ad–22(e)(2), as previously discussed, to include new paragraph (vi), which requires policies and procedures for governance arrangements that consider the interests of participants' customers and other stakeholders. Further, the Commission notes that the requirements of Section 17A(b)(3)(F) of the Exchange Act, which require that the rules of a clearing agency be designed to, in general, protect investors and the public interest, also address the commenter's concern.

iii. Accountability of the Board of Directors and Senior Management

One commenter expressed concern that the proposed rules fail to foster accountability by the board and management, and the commenter requested that the Commission require covered clearing agencies to clearly document the roles and responsibilities of the board of directors and management and implement governance arrangements that specify clear and direct lines of responsibility.[208] To address this concern, the Commission is modifying proposed Rule 17Ad–22(e)(2) to include new paragraph (v) to require each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.[209] The Commission believes that such policies and procedures should generally entail documenting the responsibilities of the board of directors and senior management, which could help foster accountability and complement the requirements described above that address the qualifications of the board and management. The Commission believes that this additional requirement will assist a covered clearing agency in formulating its policies and procedures for assessing the qualifications of board members and management by requiring the covered clearing agency to further specify the roles that each individual would fulfill and the lines of responsibility that would exist within the board and within management. The Commission believes that such accountability can help ensure that a covered clearing agency is well-positioned to fulfill its risk management obligations. For example, the Commission believes that a covered clearing agency should clearly define roles and responsibilities for addressing governance over financial risk (including credit risk, margin, and liquidity risk), operational risk, and other risks reflected in the covered clearing agency's risk management framework.

iv. Conflicts of Interest

One commenter stated that proposed Rule 17Ad–22(e)(2) does not require covered clearing agencies to resolve conflicts of interests among board members and management and urged the Commission explicitly to require covered clearing agencies to document and maintain policies and procedures governing the resolution of conflicts of interests that may impact certain decisions by the board of directors.[210] The Commission notes, as discussed above, that the commenter's concern is addressed by Section 17A(b)(3)(F) of the Exchange Act, which requires that the rules of a clearing agency be designed, in general, to protect investors and the public interest.[211]

v. Crisis or Emergency Decision-Making

One commenter stated that governance arrangements should explicitly address decision-making during a crisis or emergency and require the covered clearing agency to obtain the views and approval of member representatives (such as through its risk committee or otherwise) before taking any material action in response to an emergency.[212] After careful consideration, the Commission declines to modify Rule 17Ad–22(e)(2) to specifically address decision-making in a crisis or emergency, and the Commission believes that Rule 17Ad–22(e) addresses such circumstances as proposed. For instance, Rule 17Ad–22(e)(2) requires policies and procedures for governance that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency, and support the public interest requirements in Section 17A and the objectives of owners and participants. A covered clearing agency

[207] *See* Better Markets at 7.

[208] *See id.* at 3.

[209] *See* Rule 17Ad–22(e)(2)(v), *infra* Part VI; ; *see also infra* Part II.C.2.c.

[210] *See* Better Markets at 6.

[211] In addition, the Commission has solicited comments on proposed rules designed to further address conflicts of interest. *See* CCA Standards proposing release, *supra* note 5, at 29589 & n.664; *see also* Exchange Act Release No. 34–64017 (Mar. 3, 2011), 76 FR 14472 (Mar. 16, 2011) (proposing Rule 17Ad–25 to address conflicts of interest and Rule 17Ad–26 to require standards for board members or board committee directors at registered clearing agencies); Exchange Act Release No. 34–63107 (Oct. 14, 2010), 75 FR 65881 (Oct. 26, 2010) (proposing Regulation MC to mitigate conflicts of interest at security-based swap clearing agencies).

[212] *See* ISDA at 2.

should generally consider whether its governance arrangements for decision-making in the ordinary course are appropriate for a crisis or emergency circumstance in light of the requirements in Rule 17Ad–22(e)(2).

In addition, Rule 17Ad–22(e)(3) requires policies and procedures that maintain a sound risk management framework for comprehensively managing risks that arise in or are borne by the covered clearing agency. Such policies and procedures must be designed to identify, measure, monitor, and manage those risks and include plans for the recovery and orderly wind-down of the covered clearing agency.[213] The Commission believes that such a framework for comprehensively managing risk generally should consider the need for decision-making in crisis or emergency circumstances.

vi. Disclosure of Major Board Decisions

Three commenters responded to a question asking whether the Commission should require covered clearing agencies to have policies and procedures that provide for governance arrangements that ensure major decisions are disclosed to the public.[214] One commenter recommended that the proposed rule expressly require that major board decisions having a broad market impact be disclosed to all relevant stakeholders and the public, except to the extent that such disclosure is inconsistent with statutory and regulatory confidentiality restrictions. The commenter noted that the CFTC has included this provision in its requirements for SIDCOs.[215] Another commenter, however, expressed the belief that such a requirement is unnecessary and that the interests of public stakeholders in having visibility into major decisions are adequately served through the participation of independent directors, through the rule filing process, and the existing voluntary disclosure practices.[216] A third commenter expressed the view that publication of board resolutions prior to a determinative decision would be confusing, potentially misleading or market moving, and could deter open discussions amongst members of the board of directors.[217]

After careful consideration, the Commission declines to modify Rule 17Ad–22(e)(2). The Commission notes that existing requirements for registered clearing agencies under Exchange Act Rule 19b–4 provide a mechanism for publishing notice of proposed rule changes, which in general must be approved by board action or under authority delegated by the board, to clearing members, the relevant stakeholders, the Commission, and the public.[218] Designated clearing agencies are further required to submit advance notices under the Clearing Supervision Act, which provides another mechanism for disclosure.[219] In addition, the requirements in Rule 17Ad–22(e)(23) regarding disclosure will also provide stakeholders and the public with information regarding certain operations and decisions of covered clearing agencies.[220]

vii. Incentives and Skin in the Game

One commenter stated that the Commission should enhance or clarify Rule 17Ad–22(e)(2) to ensure that covered clearing agencies have appropriate incentives to oversee and manage risk in a manner consistent with the public interest and objectives of participants. According to the commenter, safeguards should exist to ensure that a covered clearing agency with authority to adopt rules, policies, or procedures governing or affecting risk to participants does not face undue incentives to take on excessive risk in pursuit of increased earnings.[221] The Commission believes that Rule 17Ad–22(e)(2) sufficiently addresses the commenter's concern by requiring policies and procedures that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency, and support the public interest requirements in Section 17A of the Exchange Act and the objectives of owners and participants.[222] Rule 17Ad–22(e)(3), discussed below, also requires policies and procedures for the comprehensive management of risk, and other requirements in Rule 17Ad–22(e) are specifically designed to establish a risk management framework that sufficiently accounts for a wide spectrum of risks that a covered clearing agency may identify, assess, manage, and mitigate. Further, the Commission believes that, taken as a whole, Rule 17Ad–22(e) requires each covered clearing agency to undertake careful and ongoing consideration of the risks faced and posed by its operations.[223]

The same commenter also stated that safeguards should exist to ensure that any default management decision-making body has appropriate incentives.[224] The commenter stated that the Commission should require that any decision-making body responsible for administering a covered clearing agency's default management policies and procedures be composed of constituencies with significant exposure to potential loss as a consequence of the default management process.[225]

With respect to these comments, the Commission believes, as discussed above, that Rule 17Ad–22(e)(2) includes requirements designed to ensure governance arrangements that clearly prioritize the safety and efficiency of the covered clearing agency, support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, and support the objectives of owners and participants. In addition, the Commission believes that the requirement in Section 17A(b)(3)(F) of the Exchange Act to have rules designed, in general, to protect investors help ensure that a covered clearing agency's risk management functions are appropriately aligned with the goal of risk mitigation and responsive to the legitimate concerns of the relevant constituents. The Commission does not believe that an approach in which a CCP's default management process must be governed by a decision-making body composed of constituencies with significant exposure to potential loss as a consequence of the default management process is appropriate. Instead, the Commission believes that covered clearing agencies should be afforded discretion to structure their default management committees and manage incentives in light of the needs of their unique ownership or governance structures, provided that their governance arrangements are consistent with the requirements of the

[213] *See* Rule 17Ad–22(e)(3)(i), (ii), *infra* Part VI.

[214] *See* CCA Standards proposing release, *supra* note 5, at 29522.

[215] *See* ISDA at 2 n.5 (citing 17 CFR 39.32).

[216] *See* OCC at 5.

[217] *See* LCH at 4.

[218] *See supra* Part I.C.5 (further describing the obligations of a clearing agency with respect to proposed rule changes).

[219] *See supra* Part I.A.2.

[220] *See infra* Part II.C.23.

[221] *See* The Clearing House at 7–8.

[222] *See supra* Part II.C.2.a. and note 194 (describing the scope of the public interest requirements under Section 17A of the Exchange Act).

[223] *See supra* Parts II.A.2 and II.C.2.b.i (further discussing the risks posed by a covered clearing agency's ownership structure, organizational form, markets served, and products cleared).

[224] *See* The Clearing House at 8.

[225] *See* The Clearing House at 2, 9. The commenter further elaborated that the assumption of risk by a CCP must be governed by a risk management committee comprised of persons whose interests are aligned by exposure to the losses associated with such risks (including members and, where a CCP has capital at risk in the waterfall, representatives of the CCP), with those members with the greatest risk exposure within the CCP constituting the majority of such committee. The commenter added that such a structure would ensure that the CCP's risk management function is appropriately aligned with risk mitigation incentives. *See id.,* annex at 15.

Exchange Act and rules and regulations thereunder, including Section 17A(b)(3)(C), concerning the fair representation of shareholders or members and participants in the administration of the covered clearing agency's affairs. The Commission believes that decisions regarding default management should reside with those who have extensive expertise and expert knowledge of the tools available at the covered clearing agency to manage a default. Further, even if the risk exposures of clearing members are generally stable, they can change, perhaps rapidly, during periods of market stress.

Lastly, the commenter stated that, to ensure that a covered clearing agency's governance arrangements align with the public interest and the interest of constituencies subject to the risk of a clearing agency default, the Commission should require a covered clearing agency to commit its own capital on a pre-funded basis to satisfy its losses arising from the default of one or more participants in an amount that equals or exceeds 10% of the aggregate participant contribution to the clearing or guaranty fund of the covered clearing agency. Further, the commenter stated that the Commission should require that a covered clearing agency provide, in its relevant rules, policies, or procedures, that upon the occurrence of a default or series of defaults and application of all available assets of the defaulting participant(s) to satisfy resulting losses, the covered clearing agency shall apply its own capital contribution to the relevant clearing or guaranty fund in full to satisfy any remaining losses prior to the application of any (a) contributions by non-defaulting participants to the clearing or guaranty fund or (b) assessments that the covered clearing agency require non-defaulting participants to contribute following the exhaustion of such participant's funded contributions to the relevant clearing or guaranty fund.[226] The commenter expressed concern that, absent such a requirement, a CCP's own exposure to its clearing or guaranty fund(s)—often described as ''skin in the game''—is generally quite limited and capped at the amount of the CCP's funded or dedicated contribution.[227] The commenter stated that the absence of ''skin-in-the-game'' insulates a CCP's owners from losses at the CCP even though they benefit from the fee income associated with increased activity at the CCP, regardless of the incremental risk presented by such activity.[228] The commenter stated that, particularly in the case of for-profit CCPs (or CCPs whose owners or risk decision-makers are not subject to default risk assumed by the CCP), this misalignment of risk and reward creates moral hazard and is inconsistent with supporting the public interest and the objectives of participants.[229]

After careful consideration, the Commission declines to modify Rule 17Ad–22(e) to specifically include a ''skin-in-the-game'' requirement. The Commission believes that, taken as a whole, Rule 17Ad–22(e)(2) facilitates robust governance arrangements and the management of competing incentives. The Commission believes it is appropriate to provide covered clearing agencies with flexibility, subject to their obligations and responsibilities as SROs under the Exchange Act, to structure their default management processes to take into account the particulars of their financial resources, ownership structures, and risk management frameworks. The Commission believes that the proper alignment of incentives is an important element of a covered clearing agency's risk management practices, and notes that ''skin-in-the-game'' may play a role in those risk management practices in many instances but in other instances may not be essential to a robust governance framework.

c. Final Rule

As discussed above, the Commission is adopting Rule 17Ad–22(e)(2) with modifications.[230] First, the Commission is adopting new paragraph (v), which requires a covered clearing agency's governance arrangements to specify clear and direct lines of responsibility, as discussed above.

Second, the Commission is adopting new paragraph (vi) to require a covered clearing agency's governance arrangements to consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency. The comments received in response to Rule 17Ad–22(e)(2) expressed concern as to whether a covered clearing agency will have governance arrangements sufficiently robust to incorporate the views of the relevant stakeholders and to withstand the influence of potentially improper incentives. The Commission believes that this modification alleviates these concerns by adding a requirement to consider the interests of the relevant stakeholders.

Further, because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(2), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining its policies and procedures:

- Whether it has objectives that place a high priority on the safety and efficiency of the covered clearing agency and explicitly support financial stability and other relevant public interest considerations; [231]
- whether it has documented governance arrangements that provide clear and direct lines of responsibility and accountability, and whether these arrangements are disclosed to owners, relevant authorities, participants, and, at a more general level, the public;
- whether the roles and responsibilities of its board of directors are clearly specified, and whether there are documented procedures for the functioning of the board of directors, such as procedures for identifying, addressing, and managing member conflicts of interest, and for reviewing the board's overall performance and the performance of its individual members regularly;
- whether the board of directors contains suitable members with the appropriate skills and incentives to fulfill the board's multiple roles, and whether the board of directors should include non-executive board members;
- whether the roles and responsibilities of management have been clearly specified and whether management has the appropriate experience, mix of skills, and the integrity necessary to discharge their responsibilities for the operation and risk management of the covered clearing agency;
- whether the board of directors has established a clear, documented risk-management framework that includes the covered clearing agency's risk-tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision making in crises and emergencies, and whether the governance arrangements ensure that the risk-management and internal control functions have sufficient authority, independence, resources, and access to the board; and
- whether the board of directors has ensured that the covered clearing

[226] *See* The Clearing House at 2.

[227] *See id.* at 8.

[228] *See id.*

[229] *See id.*

[230] *See* Rule 17Ad–22(e)(2), *infra* Part VI.

[231] For these purposes, the relevant public interest considerations are the public interest requirements in Section 17A of the Exchange Act. *See* Rule 17Ad–22(e)(2)(iii), *infra* Part VI.

agency's design, rules, overall strategy, and major decisions reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders, and whether major decisions have been clearly disclosed to relevant stakeholders and, where this is broad market impact, the public.[232]

A covered clearing agency also generally should consider the specific qualifications, experience, competence, character, skills, incentives, integrity or other relevant attributes to support a conclusion that an individual nominee can appropriately serve as a board member or on senior management. Policies and procedures under Rule 17Ad–22(e)(2)(iv) could consider, among other things, requirements as to industry experience relevant to the services provided by the covered clearing agency, educational background, the absence of a disciplinary record, or other factors relevant to the qualifications of nominees being considered. With respect to Rules 17Ad–22(e)(2)(iv) and (v), the Commission notes that a covered clearing agency generally should seek to ensure that board members and senior management do not have conflicts of interest because conflicts of interest could undermine the decision-making process within a covered clearing agency or interfere with the ability of board members and senior management to discharge their duties and responsibilities.

In addition, the Commission believes that processes concerning decision-making by a covered clearing agency during a crisis generally should consider the views of member representatives and relevant stakeholders before the covered clearing agency takes any material action. Further any such policies and procedures must be consistent with the fair representation requirement in Section 17A(b)(3)(C) of the Exchange Act and the requirement in Section 17A(b)(3)(F) of the Exchange Act that a clearing agency's rules be designed, in general, to protect investors and the public interest.[233] Based on these requirements, the Commission expects that views of members will be well represented in the governance of the covered clearing agency, including in the design of governance processes for crisis or emergency decision-making. In light of the variation of business models across covered clearing agencies, the Commission believes each covered clearing agency generally should consider how best to involve members and other relevant stakeholders in the decision-making of the covered clearing agency, provided that each covered clearing agency's decision-making process is designed to be consistent with the fair representation, investor protection, and public interest requirements of Section 17A of the Exchange Act.

3. Rule 17Ad–22(e)(3): Framework for the Comprehensive Management of Risks

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(3) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency.[234] Proposed Rule 17Ad–22(e)(3)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, and subject them to review on a specified periodic basis and approval by the board of directors annually. Proposed Rule 17Ad–22(e)(3)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it establishes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses. Proposed Rule 17Ad–22(e)(3)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide risk management and internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors. Proposed Rule 17Ad–22(e)(3)(iv) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide risk management and internal audit personnel with oversight by and a direct reporting line to a risk management committee and an audit committee of the board of directors, respectively. Finally, proposed Rule 17A–22(e)(3)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an independent audit committee.[235]

b. Comments Received and Commission Response

i. General Comments

Multiple commenters expressed support for the proposed rule.[236] One commenter expressed support for the added attention in the proposed rules to managing the risks faced by clearing agencies, emphasizing in particular the proposed requirements for recovery and wind-down plans.[237] The commenter stated that a recovery and wind-down plan is essential to containing wide-spread contagion and noted that the requirement would be appropriate for all registered clearing agencies.[238] The same commenter expressed support for requiring independence for those conducting audits, as such would be necessary for establishing good corporate practices and the integrity of the audit process.[239] The commenter, however, also expressed concern that the proposed rule could be insufficient in preventing systemic failure of covered clearing agency systems during a financial panic as a result of new financial products not performing as expected during times of market stress.[240] Similarly, a second commenter stated that, given the role CCPs play in, and the risks they pose to, the financial markets, CCPs must benefit from the full panoply of risk-management tools, including strong loss absorbing capital, margin, and regular stress testing requirements (including assessing how the failure of multiple, large clearing members would affect the CCP).[241]

With respect to the latter two comments, the Commission believes that proposed Rule 17Ad–22(e), taken as a whole, is designed to mitigate the potential for systemic failures and the failures of CCPs more generally by requiring a covered clearing agency to establish policies and procedures relating to their governance and operation. Specifically, requirements in

[232] For a discussion of relevant stakeholders, see Part II.C.2.b.i.

[233] *See* 15 U.S.C. 78q–1(b)(3)(C), (F).

[234] *See* CCA Standards proposing release, *supra* note 5, at 29522–24.

[235] *See id.*

[236] *See* CFA Institute at 1; SRC at 1–2; OCC at 6.

[237] *See* CFA Institute at 1.

[238] *See id.* at 1, 7. The Commission notes that it is beyond the scope of this rulemaking to establish new requirements for clearing agencies other than covered clearing agencies.

[239] *See id.* at 7.

[240] *See id.*

[241] *See* SRC at 1–2.

Rule 17Ad–22(e) address capital,[242] margin,[243] and stress testing[244]—in addition to other areas of risk management, such as collateral,[245] credit risk,[246] liquidity risk,[247] links,[248] and participant default[249]—to help ensure that covered clearing agencies benefit from a range of risk management tools and can continue operating in times of market stress. Moreover, Rule 17Ad–22(e)(3) includes requirements for policies and procedures that reflect a comprehensive framework for risk management and includes additional requirements for policies and procedures that specifically establish an independent audit committee and recovery and wind-down plans. The Commission discusses these elements of Rule 17Ad–22(e)(3) further in Parts II.C.3.b.ii and iii below.

ii. Independence of the Audit Committee

One commenter stated that the Commission struck an appropriate balance in requiring policies and procedures that provide for an independent audit committee and permitting the board of directors to establish the criteria for independence.[250] The commenter expressed the view that the definition of independence should be judged in the context of the particular covered clearing agency, noting that there is value in having persons with extensive industry experience serving on its audit committee, and it would not want to preclude from service such persons most likely to have the relevant experience.

iii. Recovery and Wind-Down Plans

Multiple commenters expressed views on proposed requirements concerning recovery and wind-down plans.[251] One commenter stated that covered clearing agencies should create robust and credible resolution plans to ensure that they and policymakers can plan for and mitigate the potential systemic consequences of a CCP failure without taxpayer support.[252] The commenter noted that important portions of these plans, including the size and nature of loss-absorbing buffers, should be made public so that the public and counterparties can assess the risks associated with the CCP and its members.[253] With respect to the disclosure of important aspects of these plans, the Commission notes that Rules 17Ad–22(e)(23)(iv) and (v), discussed below,[254] would require policies and procedures that provide for a comprehensive public disclosure that describes material rules, policies, and procedures regarding a covered clearing agency's recovery and wind-down plans, updated every two years or more frequently as necessary so that the disclosure remains accurate in all material respects.

Another commenter noted that wind-down may not be a workable option for critical market infrastructure providers that are the sole providers in a given market. The commenter expressed the view that while covered clearing agencies should analyze the feasibility of an orderly wind-down in their plans and include it when appropriate, recovery strategies (*i.e.,* strategies to allocate losses outside of, and without requiring, an orderly wind-down and before the need to initiate resolution proceedings) are the most effective way to promote financial stability, ensure the continuation of services, and distribute losses in a fair and economically efficient manner.[255] The Commission is mindful of this concern and believes that, in conducting its planning, a covered clearing agency generally should consider sole provider status as one of many factors in a range of potential considerations related to recovery or wind-down, including a consideration of which options may be the most feasible or workable. The Commission does not believe, however, that a covered clearing agency's sole provider status necessarily precludes wind-down and, thus, a covered clearing agency is required to have policies and procedures to establish plans for both recovery and orderly wind-down pursuant to Rule 17Ad–22(e)(3)(ii).

A third commenter stated that, while the CCA Standards proposing release helps draw attention to the importance of recovery and wind-down plans having a sound legal basis, the release provides little guidance with regard to the content of such plans or stakeholder consultation procedures with respect to their adoption.[256] The commenter noted that, because the issues surrounding the recovery and resolution of CCPs are novel and complex, new rules, policies, and procedures addressing recovery and resolution that go beyond existing, capped assessment powers would be appropriate subject matter for a detailed review by the Commission and public comment.[257] To facilitate a review and public comment, the commenter expressed the view that the Commission should articulate principles-based standards against which orderly recovery and wind-down plans could be assessed, including limited and predictable liabilities of clearing participants; non-disruption of expectations regarding close-out netting sets; consistency with accounting criteria for the netting of cleared exposures for financial statement and regulatory capital purposes; a requirement that loss-allocation rules not put any non-defaulting clearing member or customer of a clearing member in a worse position than under a liquidation in the event of the insolvency of the covered clearing agency; due consideration of the effects on incentives for participation in the default management process and clearing agency moral hazard risks; and transparency in relation to the default management process, loss allocations, and the decision-making process governing recovery and wind-down.[258]

First, the Commission believes that the factors described by the commenter, among others, are factors that a covered clearing agency could consider in developing its recovery and wind-down plans, but the Commission is declining to articulate requirements for all recovery and wind-down plans. The Commission believes that, given the nature of recovery and resolution planning, such plans are likely to closely reflect the specific characteristics of the covered clearing agency, including its ownership, organizational, and operational structures, as well as the size, systemic importance, global reach, and/or the risks inherent in the products it

[242] *See infra* Part II.C.15 (describing requirements under Rule 17Ad–22(e)(15)).

[243] *See infra* Part II.C.6 (describing requirements under Rule 17Ad–22(e)(6)).

[244] *See infra* Parts II.C.4 and 7 (describing requirements under Rules 17Ad–22(e)(4) and (7)).

[245] *See infra* Part II.C.5 (describing requirements under Rule 17Ad–22(e)(5)).

[246] *See infra* Part II.C.4 (describing requirements under Rule 17Ad–22(e)(4)).

[247] *See infra* Part II.C.7 (describing requirements under Rule 17Ad–22(e)(7)).

[248] *See infra* Part II.C.20 (describing requirements under Rule 17Ad–22(e)(20)).

[249] *See infra* Part II.C.13 (describing requirements under Rule 17Ad–22(e)(13)).

[250] *See* OCC at 6.

[251] *See* SRC at 2. In addressing comments regarding recovery and wind-down plans, the Commission generally understands that: (i) When a financial company becomes non-viable as a going concern or insolvent, recovery refers to actions taken that allow the financial company to sustain its critical operations and services; (ii) resolution (or wind-down), by contrast, refers to the transferring of the financial company's critical operations and services to an alternate entity.

[252] *See* SRC at 2.

[253] *See id.*

[254] *See infra* Part II.C.23.

[255] *See* DTCC at 6.

[256] *See* ISDA at 3.

[257] *See id.*

[258] *See id.*

clears.[259] In particular, the Commission notes that the available recovery tools will vary depending on the products cleared. Second, the Commission also believes that recovery and wind-down plans should be subject to public comment and Commission review. The Commission believes that recovery and wind-down plans, and material changes thereto, would constitute a proposed rule change under Section 19(b) of the Exchange Act and, for designated clearing agencies, an advance notice under the Clearing Supervision Act because such plans and material changes thereto would constitute changes to a stated policy, practice or interpretation of the covered clearing agency and, for designated clearing agencies, a proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated clearing agency.[260]

The commenter further stated that recovery tools such as forced allocation, initial margin haircutting of non-defaulting clearing members, invoicing back, or partial non-voluntary tear-ups should be avoided, and that pro-rata reduction in a covered clearing agency's payment obligations should be considered only as a loss allocation measure of last resort after all the resources in the clearing waterfall have been exhausted.[261] The commenter noted that this method is transparent and predictable, creating incentives for surviving participants to actively engage in the default management process and to bid aggressively in the resulting auction process.[262] The commenter acknowledged, however, that the sequencing and application of any recovery mechanisms may vary by product type and the nature of the covered clearing agency's participants, such as, for example, how certain mechanisms would apply to retail participants.[263]

As a general matter, the Commission believes it is not productive to apply such requirements for recovery and wind-down plans in a one-size-fits-all approach for covered clearing agencies. The Commission believes that recovery and wind-down plans should be considered holistically, taking into consideration the covered clearing agency's governance structure, products cleared, loss allocation rules, and mutualized structure, as applicable, because it is not possible to assess the utility of a particular recovery tool in isolation and without the context of the recovery plan as a whole. The Commission also believes that transparent governance arrangements can help ensure that members, their customers, and, as appropriate, the public have sufficient means to provide input on any recovery tools ultimately included in recovery and wind-down plans. In Part II.C.3.c below, the Commission provides guidance regarding the types of considerations that a covered clearing agency generally should consider in developing its recovery tools.

Finally, the commenter suggested that the Commission's rule should state explicitly that covered clearing agencies' recovery and wind-down plans must define the quantitative and qualitative criteria that would trigger the implementation of each type of plan.[264] The commenter did not specify what types of quantitative or qualitative criteria should trigger implementation.

After careful consideration, the Commission declines to establish a requirement that recovery and wind-down plans have qualitative and quantitate trigger criteria. The Commission believes that such a requirement would not sufficiently take into account the unique characteristics of each covered clearing agency. The Commission believes it is not possible to assess the utility of a particular approach in isolation and without the context of the recovery plan and the covered clearing agency as a whole. Further, the Commission believes that transparent governance arrangements can help ensure that members, their customers, and, as appropriate, the public have sufficient means to provide input on any recovery tools ultimately included in recovery and wind-down plans and therefore believes that consideration of such elements of a covered clearing agency's recovery and wind-down plan is best left to the applicable rule filings and advance notice processes discussed previously.

iv. Additional Requirements

One commenter supported the proposed requirements in Rule 17Ad–22(e)(3) but urged the Commission to establish additional requirements in three areas to ensure accountability and independence.[265]

First, the commenter encouraged the Commission to require the risk management framework at covered clearing agencies to assign responsibilities and accountabilities for risk decisions and address crisis and emergency decision-making. The Commission believes that Rule 17Ad–22(e)(2), as modified and discussed in Part II.C.2 above, appropriately addresses these concerns. Specifically, Rule 17Ad–22(e)(2)(v), as adopted, requires that a covered clearing agency's policies and procedures document the responsibilities of the board of directors and senior management and specify clear and direct lines of responsibility. In the above discussion, the Commission also specifically noted the importance of clear and direct lines of responsibility in addressing crises and facilitating appropriate decision-making in emergency situations.[266]

Second, the commenter urged the Commission to require the board of directors to have a risk committee comprised of and led by a majority of independent directors; the risk committee to have a clear mandate and operating procedures; and the risk committee to have access to external expert advice.[267] The commenter also encouraged the Commission to implement enhanced measures to ensure that important risk management functions are appropriately insulated from conflicts of interest among board members representing clearing members. The Commission believes that the rule as proposed already addresses these concerns. Rule 17Ad–22(e)(3)(iii) requires a covered clearing agency's policies and procedures to provide risk management and internal audit personnel with, among other things, sufficient independence from management and access to the board of directors. In addition, proposed Rule 17Ad–22(e)(3)(iv) requires policies and procedures that provide risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an audit committee of the board of directors, respectively. With respect to having a risk committee comprised of and led by a majority of independent directors, the Commission

[259] *See supra* Parts II.A.2 and II.C.2.b.i (further discussing the differing characteristics of a covered clearing agency related to its ownership structure, organizational form, markets served, and products cleared).

[260] *See supra* Part I.C.5 (further describing the obligations of a clearing agency with respect to proposed rule changes under Rule 19b–4 and advance notices under the Clearing Supervision Act).

[261] *See* ISDA at 3. Similarly, two other commenters also recommend that the Commission specifically prohibit covered clearing agencies from using variation margin and initial margin haircutting as recovery tools to continue operation in times of financial distress. *See* Fidelity at 3–4; *see also* ICI at 13–14.

[262] *See* ISDA at 3.

[263] *See id.* at 4.

[264] *See* ISDA at 4.

[265] *See* Better Markets at 8–9.

[266] *See supra* Part II.C.2.b.iii.

[267] *See* Better Markets at 9.

notes that although it may be appropriate for a risk committee to be comprised of and led by a majority of independent directors, the Commission believes that the covered clearing agency would have to consider its particular facts and circumstances, and that it is inappropriate to prescribe a particular structure for risk committees in Rule 17Ad–22(e)(3). The Commission further notes that the definition of independence should reflect the objective of establishing and maintaining robust risk management.

Third, the commenter requested that the Commission require a covered clearing agency to have a chief risk officer responsible for implementing the risk management framework and making recommendations to the risk management committee or board of directors. The Commission believes that establishing a chief risk officer is one way to structure a risk management framework consistent with Rule 17Ad–22(e)(3) and notes that, currently, each covered clearing agency has a chief risk officer responsible for implementing the covered clearing agency's risk management framework. The Commission recognizes that these responsibilities are critically important but does not believe it is necessary to prescribe a chief risk officer because other distributions of responsibility among the roles within a covered clearing agency may also be consistent with the requirements of the Exchange Act, provided that the responsibilities are clearly specified, the persons occupying the specified roles have appropriate experience and skills to discharge their duties and responsibilities, and the responsibilities comprehensively encompass the risk management needs of the clearing agency.

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(3) with one modification. To make clear that the audit committee described in Rule 17Ad–22(e)(3)(iv) and the independent audit committee described in Rule 17Ad–22(e)(3)(v) are not separate audit committees, the Commission is adding ''independent'' before audit committee in Rule 17Ad–22(e)(3)(iv).[268] In addition, because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(3), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures for its framework for the comprehensive management of risk:

- Whether it has risk management policies, procedures, and systems that enable it to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency and whether the risk management frameworks are subject to periodic review;
- whether it provides incentives to participants and, where relevant, their customers to manage and contain the risks they pose to the covered clearing agency;
- whether it regularly reviews the material risks it bears from and poses to other entities (including other clearing agencies, settlement banks, liquidity providers, and service providers) as a result of interdependencies and develop appropriate risk management tools to address these risks;
- whether it can identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down, and whether it has prepared appropriate plans for its recovery or orderly wind-down based on the results of that assessment; and
- whether it has provided relevant authorities with the information needed for purposes of recovery and resolution planning.

The Commission notes that a comprehensive approach to risk management means policies and procedures should be designed holistically, be consistent with each other, and work effectively together to mitigate the risk of financial losses to a covered clearing agency's members and participants in the markets it serves. The Commission further notes that each covered clearing agency must have its own policies and procedures encompassing a framework for the ''comprehensive'' management of risks. For example, if a covered clearing agency's parent or holding company were to adopt a company-wide risk management framework, the covered clearing agency nevertheless would itself need to adopt or ratify those policies and procedures pursuant to the requirements of the rule filing process under Rule 19b–4 and, if applicable, the advance notice process under the Clearing Supervision Act,[269] with respect to its own business to meet the requirements of Rule 17Ad–22(e)(3).

With respect to Rule 17Ad–22(e)(3)(i), the board of directors of a covered clearing agency generally should consider whether to subject all material components of the covered clearing agency's risk management policies and procedures to review due to the critical role that risk management plays in promoting prompt and accurate clearance and settlement. Further, such review generally should take a holistic view of the full range of risk management policies, procedures, and systems, rather than consider each on an individual or case-by-case basis. In addition, a covered clearing agency generally should perform the annual review under Rule 17Ad–22(e)(3)(i) once every twelve months.

With respect to recovery and wind-down plans, each covered clearing agency generally should develop its plans expeditiously to facilitate regulatory review by the Commission and other relevant regulatory bodies. In particular, the Commission believes that a covered clearing agency generally should have policies and procedures to provide the relevant resolution authorities with information needed for the purposes of resolution planning under applicable authority, including any plans prepared pursuant to Rule 17Ad–22(e)(3). The Commission works with the FDIC and other resolution authorities, as appropriate, to help ensure the development of effective resolution strategies for covered clearing agencies; providing the Commission and the FDIC information for resolution planning would promote the ongoing development of these strategies.

In addition, with respect to recovery tools, a covered clearing agency generally should consider the following when developing its recovery tools: (i) Whether the set of recovery tools comprehensively addresses how the covered clearing agency would continue to provide critical services in all relevant scenarios; (ii) the extent to which each tool is reliable, timely, and has a strong legal basis; (iii) whether the tools are transparent and designed to allow those who would bear losses and liquidity shortfalls to measure, manage, and control their potential losses and liquidity shortfalls; (iv) whether the tools create appropriate incentives for the covered clearing agency's owners, direct and indirect participants, and other relevant stakeholders; and (v) whether the tools are designed to minimize the negative impact on direct and indirect participants and the financial system more broadly.

4. Rule 17Ad–22(e)(4): Credit Risk

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(4) would require a covered clearing agency

[268] *See* Rule 17Ad–22(e)(3), *infra* Part VI.

[269] *See supra* Parts I.A.1 and 2.

to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes, including by, at a minimum, meeting the seven requirements specified in the rule.[270]

Proposed Rule 17Ad–22(e)(4)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. Proposed Rule 17Ad–22(e)(4)(ii) would require a covered clearing agency that provides CCP services, and that is ''systemically important in multiple jurisdictions'' or ''a clearing agency involved in activities with a more complex risk profile,'' to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources, to the extent not already maintained pursuant to proposed Rule 17Ad–22(e)(4)(i), at a minimum level necessary to enable it to cover a wide range of foreseeable stress scenarios, including but not limited to the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions (hereinafter the ''cover two'' requirement). The Commission also proposed Rule 17Ad–22(a)(19) to define ''systemically important in multiple jurisdictions'' to mean a covered clearing agency that has been determined by the Commission to be systemically important in more than one jurisdiction pursuant to Rule 17Ab2–2.[271] Proposed Rule 17Ad–22(e)(4)(iii) would require a covered clearing agency that is not subject to proposed Rule 17Ad–22(e)(4)(ii) to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources, to the extent not already maintained pursuant to proposed Rule 17Ad–22(e)(4)(i), at the minimum to enable it to cover a wide range of foreseeable stress scenarios, including the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions (hereinafter the ''cover one'' requirement). Proposed Rule 17Ad–22(e)(4)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to include prefunded financial resources, excluding assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating the financial resources available to meet the standards under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable. Proposed Rule 17Ad–22(e)(4)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain the financial resources required under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable, in combined or separately maintained clearing or guaranty funds.

Proposed Rule 17Ad–22(e)(4)(vi) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to test the sufficiency of its total financial resources available to meet the minimum financial resource requirements under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable, by conducting a stress test of its total financial resources at least once each day using standard predetermined parameters and assumptions.[272] The Commission also proposed Rule 17Ad–22(a)(18) to define ''stress testing'' to mean the estimation of credit and liquidity exposures that would result from the realization of extreme but plausible price changes or changes in other valuation inputs and assumptions.[273] Proposed Rule 17Ad–22(e)(4)(vi) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to conduct a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and consider modifications to ensure they are appropriate for determining the covered clearing agency's required level of default protection in light of current market conditions. When the products cleared or markets served by a covered clearing agency display high volatility or become less liquid, and when the size or concentration of positions held by the entity's participants increases significantly, the proposed rule would require a covered clearing agency to have policies and procedures for conducting comprehensive analyses of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly. Proposed Rule 17Ad–22(e)(4)(vi) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for the reporting of the results of this analysis to the appropriate decision makers at the covered clearing agency, including its risk management committee or board of directors, and to require the use of the results to evaluate the adequacy of and to adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management policies and procedures, in supporting compliance with the minimum financial resources requirements in proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable.[274]

Finally, proposed Rule 17Ad–22(e)(4)(vii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require a conforming model validation for its credit risk models to be performed not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management policies and procedures.[275] The Commission also proposed to define ''conforming model validation'' in Rule 17Ad–22(a)(5) to mean an evaluation of the performance of each material risk management model used by a covered clearing agency, including initial margin models, liquidity risk models, and models used to generate guaranty fund requirements, along with the related parameters and assumptions associated with such models.[276] The proposed definition would further require that the model validation be performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models or policies

[270] *See* CCA Standards proposing release, *supra* note 5, at 29525–27.

[271] *See id.* at 29525. The Commission received no comments regarding the proposed definition and is adopting it as proposed. Because of other modifications to Rule 17Ad–22(a), the definition of ''systemically important in multiple jurisdictions'' is being moved to Rule 17Ad–22(a)(18). *See* Rule 17Ad–22(a)(18), *infra* Part VI.

[272] *See id.* at 29526–27.

[273] *See id.* at 29527. The Commission received no comments regarding the proposed definition and, based on its supervisory experience, is adopting it with modifications, as discussed further below. Because of other modifications to Rule 17Ad–22(a), the definition of ''stress testing'' is also being moved to Rule 17Ad–22(a)(17). *See* Rule 17Ad–22(a)(17), *infra* Part VI.

[274] *See id.* at 29526–27.

[275] *See id.* at 29527.

[276] *See id.*

being validated so that risk models can be candidly assessed.[277]

b. Comments Received and Commission Response

i. Distinguishing CCPs From CSDs

One commenter stated that proposed Rule 17Ad–22(e)(4) should distinguish between the types of risks faced by CCPs versus central securities depositories (''CSDs'') (*e.g.,* the requirement that CSDs hold the financial resources they maintain to cover the risk of participant default in a guaranty or clearing fund).[278] The commenter recommended that the provision be revised to clarify the portions of proposed Rule 17Ad–22(e)(4) that are intended to apply to covered clearing agencies that are CCPs, and those that should apply to covered clearing agencies that are CSDs.[279] As a general matter, the Commission believes that Rule 17Ad–22(e)(4) appropriately distinguishes between the risks inherent in CCPs and CSDs. For example, Rule 17Ad–22(e)(4)(ii) requires policies and procedures that meet ''cover two'' for CCPs that are systemically important or engaged in activities with a more complex risk profile, while Rules 17Ad–22(e)(4)(i) and (iii) require policies and procedures for financial resources for all other covered clearing agencies, including CSDs.[280] With respect to Rule 17Ad–22(e)(4)(v), which requires a covered clearing agency to have policies and procedures for maintaining the financial resources required under Rules 17Ad–22(e)(4)(i) through (iii) in combined or separately maintained clearing or guaranty funds, ''clearing or guaranty fund'' would also include the participant fund of a CSD.[281] The Commission believes that this statement clarifies how Rule 17Ad–22(e)(4) would apply to both CCPs and CSDs, and therefore addresses the concern raised by the commenter.

ii. Prefunded Financial Resources

One commenter expressed support for proposed Rule 17Ad–22(e)(4)(iv) but sought clarification on the role of using default insurance to satisfy the rule.[282] The Commission is aware that default insurance has been discussed among industry participants as a tool to help CCPs manage credit risk. While the viability of any particular default insurance plan would necessarily depend on the particulars of the underlying insurance agreement, the Commission notes that the financial resource requirements in Rule 17Ad–22(e)(4) must be prefunded and may not be conditional as is typical with insurance payments. Therefore, the use of default insurance generally would not be consistent with the requirement that certain financial resources be prefunded under Rule 17Ad–22(e)(4)(iv).

While generally supportive of the rule, another commenter expressed concern that members of covered clearing agencies may have difficulty meeting their obligations to the covered clearing agency if the covered clearing agency delays in exercising its authority to require members to provide additional guaranty funds after such funds are exhausted following the default of a member.[283] To address this concern, the commenter stated that it would be appropriate to ensure that such guaranty funds are properly funded in advance of market stress. The Commission believes that the provisions in proposed Rule 17Ad–22(e)(4) adequately address whether the guaranty fund is properly funded in advance of market stress and is therefore declining to modify the rule. Rule 17Ad–22(e)(4)(i) requires policies and procedures for maintaining sufficient financial resources to cover a covered clearing agency's credit exposure to each participant fully with a high degree of confidence through its margin system and collateral requirements, while Rules 17Ad–22(e)(4)(ii) and (iii) require a covered clearing agency to have policies and procedures that meet either ''cover two'' or ''cover one'' on an ongoing basis. In addition, the Commission notes that Rule 17Ad–22(e)(4)(iv) excludes assessments for additional guaranty fund contributions when calculating the financial resources available, preventing a covered clearing agency from considering among its financial resources contributions that are not prefunded.

A third commenter stated that, in addition to pre-funded capital and guaranty funds, it should be clear, in advance, that clearing members (and not the FRB or taxpayers) stand behind the organization should it run into financial trouble.[284] The Commission notes that Rule 17Ad–22(e)(3)(ii) requires policies and procedures reasonably designed to ensure that a covered clearing agency establishes plans for the recovery or wind-down of a covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses. The Commission believes that such recovery and wind-down plans are an effective tool that can help a covered clearing agency establish policies and procedures for managing losses in excess of its default management and general business risk resources.[285] The provisions of Rule 17Ad–22(e)(5), discussed below, are also intended to help ensure that a covered clearing agency is resilient in times of market stress by requiring policies and procedures that limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and that set and enforce appropriately conservative haircuts and concentration limits on collateral the covered clearing agency accepts to manage its or its participants' credit exposure.[286] Requirements for stress testing in Rule 17Ad–22(e)(4) and margin in Rule 17Ad–22(e)(6) further support the resiliency of a covered clearing agency by requiring the covered clearing agency to have policies and procedures that are designed to appropriately size guaranty fund contributions and margin to market risks.[287] In addition, requirements in Rule 17Ad–22(e)(18) for policies and procedures relating to participation in the covered agency require (i) objective and risk-based criteria for participation, (ii) participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the covered clearing agency, and (iii) monitor compliance with such participation criteria on an ongoing basis.[288] Taken as a whole, the Commission believes that the requirements in Rule 17Ad–22(e) comprehensively promote the resiliency of a covered clearing agency and, in particular, its ability to withstand periods of market stress.

iii. Segregation of Guaranty Funds

One commenter suggested that, to prevent the spread of losses from one product or asset type to participants or customers participating in another product or asset type, as well as to avoid the inequitable treatment of participants clearing less liquid product or asset types, the Commission should require a covered clearing agency to implement policies and procedures that would,

[277] The Commission is modifying the definition to strike the word ''conforming,'' as described in Part II.C.4.c below. Because of this and other modifications to Rule 17Ad–22(a), the Commission is moving the definition of ''model validation'' to Rule 17Ad–22(a)(9). *See infra* Part VI.

[278] *See* DTCC at 5.

[279] *See id.* at 5; *id.* at A–1 (suggesting drafting clarifications to proposed Rule 17Ad–22(e)(4)).

[280] *See supra* Part II.C.4.a.

[281] *See id.* at 5.

[282] *See* Barnard at 2.

[283] *See* CFA Institute at 7–8.

[284] *See* SRC at 2.

[285] *See supra* Part II.C.3.b.iii.

[286] *See infra* Part II.C.5.

[287] *See infra* Parts II.C.4.b.iv (discussing stress testing) and II.C.6 (discussing margin).

[288] *See infra* Part II.C.18.

upon the insolvency of a particular clearing service or the clearing agency as a whole, contain related losses within the particular clearing service.[289] The commenter stated that the Commission should require covered clearing agencies to maintain separate clearing or guaranty funds for product or asset types that exhibit materially different liquidity profiles.[290] The commenter also stated that combined clearing or guaranty funds, in contrast, transmit losses from one product or asset type to participants and customers participating in another product or asset type in a manner that promotes contagion and systemic risk, which the commenter believes is inconsistent with the PFMI.[291] The commenter further argued that combined clearing or guaranty funds are not consistent with the requirement for the equitable treatment of participants in Section 17A(b)(3)(D) of the Exchange Act where the cleared products display materially different liquidity characteristics.[292]

First, the Commission notes that Section 17A(b)(3)(D), which sets forth one of the determinations that the Commission must make in registering a clearing agency, does not concern clearing or guaranty fund contributions; rather Section 17A(b)(3)(D) of the Exchange Act states that the rules of the clearing agency must provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[293]

Second, the Commission believes that a clearing agency can use both margin—targeted to the risk profile of the participant and used to satisfy losses attributed to the participant—and guaranty or clearing fund contributions—targeted to the risk profile of the participant and then mutualized in a pooled fund to satisfy losses attributable to the clearing agency—to help mitigate the transmission of losses across participants. The Commission disagrees with the commenter's suggestion that a pooled fund necessarily promotes contagion and systemic risk; a pooled fund may offer certain benefits. For instance, a pooled fund can help mitigate the possibility that participants in the clearing agency will be called upon to help satisfy losses when a defaulting participant is unable to satisfy those losses, and a clearing agency should carefully assess the structure of its default waterfall to analyze the potential risk mitigation tools that might be employed in the default waterfall, including the use of margin and the use of a guaranty or clearing fund. To the extent that a clearing agency uses guaranty or clearing fund contributions to mutualize risk across participants, the clearing agency generally should value margin and guaranty fund contributions so that the contributions are commensurate to the risks posed by the participants' activity. The clearing agency also generally should consider the appropriate balance of individualized and pooled elements within its default waterfall, with a careful consideration of whether the balance of those elements mitigates risk and to what extent an imbalance among those elements might encourage moral hazard, in that one participant may take more risks because the other participants bear the costs of those risks.

The commenter also suggested that, to facilitate effective risk management and better protect participant/customer collateral, the Commission should require covered clearing agencies to calculate, collect, and maintain clearing or guaranty fund contributions and participants' initial margin requirements independent of each other, subject to an appropriate transition period.[294] The commenter observed that some covered clearing agencies do not maintain separate clearing or guaranty fund requirements and initial margin requirements, making it more difficult for participants to model and manage the risks they face from the covered clearing agency.[295] In addition, the commenter stated that commingling the treatment of clearing or guaranty fund contributions with initial margin exposes non-defaulting participants (and potentially their customers) to the risk of losing their initial margin in the event of another participant's default, a result inconsistent with the protection of non-defaulting participant/customer collateral.[296] The commenter stated that initial margin of non-defaulting participants and their clearing customers should not be at risk as part of the default waterfall.[297]

Further, the commenter recommended that the Commission modify proposed Rule 17Ad–22(e)(4)(v) to require a covered clearing agency that provides clearing services for two or more product or asset types that have materially different liquidity characteristics to segregate the clearing services for each such product or asset type and organize and structure itself and adopt such rules as shall be necessary to (i) continue operations for other clearing services notwithstanding the need to wind down operations for a particular clearing service and (ii) prevent the use of a particular clearing service's resources to cover losses that occur in a separate clearing service.[298]

The Commission is declining to incorporate these specific recommendation into Rule 17Ad–22(e)(4)(v). To the extent that these types of commingled arrangements are employed, they must be prefunded and therefore agreed to by the participants ex ante, prior to becoming members of the covered clearing agency. The Commission acknowledges that loss mutualization and other pooling-of-resources arrangements involve trade-offs that a clearing agency generally should carefully assess and balance. A covered clearing agency may be better able to manage multiple defaults in extreme conditions more efficiently using pooled resources because the pooled resources would be greater than the resources of any single defaulting participant. Further, because the arrangements are prefunded, participants can model and manage the risks they face from the clearing agency while being able to take into account the amount of resources that they have provided to the clearing agency. The pooling of resources, however, can increase interdependencies among, and therefore the potential risks to, participants of the clearing agency. The Commission believes that considering the use of loss mutualization and other pooling-of-resources arrangements generally should, to minimize systemic risk, balance the safety and soundness of the covered clearing agency against the potential for increased exposures among participants that may arise from the manner the covered clearing agency holds financial resources. The Commission further notes that, pursuant to Rule 17Ad–22(e)(23), a covered clearing agency must establish, implement, maintain, and enforce written policies reasonably designed to disclose, among other things, key aspects of its default rules and procedures and the risks, fees, and other material costs participants incur by participating in the covered clearing agency. The availability of these policies and procedures should allow participants to understand in advance a covered clearing agency's reliance on

[289] *See* The Clearing House at 3, 17.

[290] *See id.* at 17.

[291] *See id.*

[292] *See id.* (citing 15 U.S.C. 78q–1(b)(3)(D)).

[293] For purposes of this section, the Commission is assuming that ''clearing fund,'' in contrast to guaranty fund, refers to a combined pool of both margin collections and guaranty fund contributions.

[294] *See* The Clearing House at 3, 17, 18.

[295] *See id.* at 17.

[296] *See id.*

[297] *See id.* at 17, 18.

[298] *See* The Clearing House at 18.

either on a defaulter-pays approach or a pooling-of-resources approach.[299]

iv. Stress Testing

Commenters generally supported the use of stress testing and model validation and the approach taken in Rule 17Ad–22(e)(4),[300] but one commenter recommended that the rule also include a requirement for reverse stress testing. In the commenter's view, reverse stress testing is a useful tool to manage expectations and to help anticipate financial resource requirements in extreme conditions.[301] The Commission also believes that reverse stress testing can be a useful tool to evaluate the adequacy of financial resources, but the Commission is declining to modify Rule 17Ad–22(e)(4) to specifically mandate this practice so that each covered clearing agency retains 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. Below the Commission provides additional guidance on the requirement that relates to stress testing in the rule.

c. Final Rule

As previously noted, the Commission is adopting the definition ''systemically important in multiple jurisdictions'' as proposed, but because of other modifications to Rule 17Ad–22(a), the definition is being moved to Rule 17Ad–22(a)(18).[302] The Commission is modifying the definition of ''stress testing'' to mean the estimation of credit or liquidity exposures that would result from the realization of potential stress scenarios, such as extreme price changes, multiple defaults, or changes in other valuation inputs and assumptions. The Commission believes that this modification, and in particular the removal of ''but plausible,'' helps ensure that policies and procedures for stress testing comprehensively consider a range of stress scenarios that may be used in sizing the guaranty fund, in light of the variation in markets served and products cleared by covered clearing agencies.[303] Because of other modifications to Rule 17Ad–22(a), the definition is being moved to Rule 17Ad–22(a)(17).[304] The Commission is also modifying the definition of ''conforming model validation'' by striking ''conforming'' since the Commission has not separately defined ''model validation'' in Rule 17Ad–22(a). Because of this and other modifications to Rule 17Ad–22(a), the definition of ''model validation'' has been moved to Rule 17Ad–22(a)(9).[305]

In addition, the Commission is adopting Rule 17Ad–22(e)(4) with modifications.[306] First, the Commission is modifying Rule 17Ad–22(e)(4)(v) so that it references only paragraphs (e)(4)(ii) and (iii) (and not paragraph (e)(4)(i)) because a covered clearing agency may hold financial resources consistent with Rule 17Ad–22(e)(4)(i), such as initial margin, separately from the guaranty or clearing fund.[307] Second, the Commission is modifying Rule 17Ad–22(e)(4)(vii) to conform to the revised definition of ''model validation'' and striking ''to be performed'' from the rule to be consistent with the corresponding requirement for model validation of liquidity risk models in Rule 17Ad–22(e)(7)(vii). Third, the Commission is making a technical correction to Rule 17Ad–22(e)(4)(iv) to make clear that prefunded financial resources should be exclusive of assessments for additional guaranty fund contributions or other resources that are not prefunded by modifying Rule 17Ad–22(e)(4)(iv) to state ''exclusive of'' assessments rather than ''excluding'' assessments. Fourth, the Commission is modifying Rule 17Ad–22(e)(4)(vi)(A) to refer to ''stress testing'' rather than ''a stress test'' to improve consistency with the definition of ''stress testing'' in Rule 17Ad–22(a)(17). Fifth, the Commission is revising Rule 17Ad–22(e)(4)(vi)(C) to replace ''and'' with ''or'' so that the criteria for conducting analysis more frequently than monthly are disjunctive rather than conjunctive, since the criteria described may not be correlated to each other. This modification is consistent with the Commission's description of the proposed rule in the CCA Standards proposing release.[308] Sixth, the Commission is correcting a technical error in Rule 17Ad–22(e)(4)(vi)(D): references to paragraphs (e)(4)(iv)(B) and (C) will be changed to paragraphs (e)(4)(vi)(B) and (C) respectively. Sixth, the Commission is moving requirements proposed in Rule 17Ad–22(e)(13) to Rule 17Ad–22(e)(4) so that all requirements pertinent to a covered clearing agency's management of credit risk are contained in one rule. This modification and the related rule text are discussed in Part II.C.13.c.

Further, because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(4), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address credit risk:

- Whether it has established a robust framework to manage its credit exposures to its participants and the credit risks arising from its payment, clearing, and settlement processes, mindful that credit exposures may arise from current exposures, potential future exposures,[309] or both;
- whether it has identified sources of credit risk and can routinely measure and monitor credit exposures, using appropriate risk management tools to control these risks;
- if it provides CCP services, whether it has covered its current and potential future exposures to each participant fully with a high degree of confidence using margin and other prefunded financial resources, and (i) if it is involved in activities with a more-complex risk profile or is systemically important in multiple jurisdictions, whether it maintains additional financial resources to cover a wide range of potential stress scenarios including but not limited to the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions, or (ii) in the case of all other covered clearing agencies, whether it maintains additional financial resources sufficient to cover a wide range of potential stress scenarios including but not limited to the default of the participant and its affiliates that would potentially cause

[299] *See infra* Parts II.C.18 and II.C.23 (describing requirements under Rule 17Ad–22(e) for access and participation and disclosure of rules, key procedures, and market data).

[300] *See, e.g.,* CFA Institute at 8; OCC at 9.

[301] *See* Barnard at 2.

[302] *See supra* note 271; *see also* Rule 17Ad–22(a)(18), *infra* Part VI.

[303] The Commission notes that this does not alter the coverage requirements in Rules 17Ad–22(e)(4)(ii) and (iii), which require policies and procedures that enable a covered clearing agency to maintain financial resources at a minimum level necessary to enable it to cover a wide range of foreseeable stress scenarios, including but not limited to the default of the participant family (in the case of ''cover one'') or two participant families (in the case of ''cover two'') that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. *See infra* Part VI.

[304] *See supra* note 271; *see also* Rule 17Ad–22(a)(17), *infra* Part VI.

[305] *See* Rule 17Ad–22(a)(9), *infra* Part VI. The Commission is also striking ''conforming'' from Rules 17Ad–22(e)(6)(vii) and (e)(7)(vii) consistent with the new ''model validation'' term. *See infra* Parts II.C.6.c and II.C.7.c.

[306] *See* Rule 17Ad–22(e)(4), *infra* Part VI.

[307] *See* CCA Standards proposing release, *supra* note 5, at 29526.

[308] *See id.* at 29526 (for Rule 17Ad–22(e)(4)(iv)), 29526–27 (for Rule 17Ad–22(e)(4)(vi)(C)).

[309] *See infra* Part II.C.6 (discussing potential future exposures in more detail).

the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions;

• if it provides CCP services, whether it has, consistent with Rules 17Ad–22(e)(2) and (e)(3), documented its supporting rationale for, and has appropriate governance arrangements relating to, the amount of total financial resources it maintains;

• if it provides CCP services: whether it determines the amount and regularly tests the sufficiency of its total financial resources available in the event of a default or multiple defaults in extreme but plausible market conditions through rigorous stress testing; whether it has clear procedures to report the result of its stress tests to the appropriate decision makers at the covered clearing agency and can use these results to evaluate the adequacy of and any appropriate adjustments to its total financial resources; whether it performs stress tests daily using standard and predetermined parameters and assumptions; whether it performs, on at least a monthly basis, a comprehensive and thorough analysis of stress testing scenarios, models, and underlying parameters and assumptions used to ensure they are appropriate for determining the covered clearing agency's required level of default protection in light of current and evolving market conditions; whether it performs this analysis more frequently when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by its participants increases significant; and whether it performs a full validation of its risk management model at least annually;

• if it provides CCP services, whether it considers, in conducting stress testing, the effect of a wide range of relevant stress scenarios in terms of both defaulters' positions and possible price changes in liquidation periods, and whether scenarios include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions; and

• whether it has established explicit rules and procedures that address fully any credit losses the covered clearing agency may face as a result of any individual or combined default among its participants with respect to any of their obligations to the covered clearing agency, addressing how potentially uncovered credit losses would be allocated, including the repayment of any funds the covered clearing agency may borrow from liquidity providers, and indicating the covered clearing agency's process to replenish any financial resources that the covered clearing agency may employ during a stress event so it can continue to operate in a safe and sound manner.

With respect to Rule 17Ad–22(e)(4)(i), ''high degree of confidence'' generally refers to the meaning of the term as it is used in statistical analysis.[310] With respect to Rule 17Ad–22(e)(4)(ii) and (iii), a covered clearing agency generally should use statistical methods to develop models that estimate the financial resources required. With respect to the relationship among Rules 17Ad–22(e)(4)(i), (ii), and (iii), the Commission notes that the requirements to examine credit exposure under foreseeable stress scenarios including extreme but plausible market conditions in proposed Rules 17Ad–22(e)(4)(ii) and (iii), as applicable, means a covered clearing agency generally should consider how its credit exposure modeled under such conditions differs from its credit exposure modeled under normal market conditions to positions of such participants, which it would also be required to measure, pursuant to proposed Rule 17Ad–22(e)(4)(i). With respect to Rule 17Ad–22(e)(4)(iv), the Commission notes the following:

• While the ability to assess participants for contributions under applicable covered clearing agency governing documents, rules, or agreements could not be included in this calculation until an assessment has been levied and collected, previously paid-in participant contributions to the covered clearing agency's default fund could be counted, to the extent the covered clearing agency's rules, policies, or procedures permit such resources to be used in a manner equivalent to other financial resources in the default fund.

• Other sources of prefunded resources, such as margin previously posted to the clearing agency by participants, may also be treated in this manner.

• The ability to draw down under a revolving loan facility could not be counted towards prefunded resources because funds from such a loan facility would not be in the covered clearing agency's immediate possession until they were drawn down, but the covered clearing agency could count borrowed funds already drawn down, such as under a term loan or other credit facility.

With respect to stress testing under Rule 17Ad–22(e)(4)(vi) as a general matter, the Commission believes that reverse stress testing can be a useful tool to evaluate the adequacy of financial resources. The Commission believes that a covered clearing agency generally should consider incorporating the use of reverse stress testing into its policies and procedures under Rule 17Ad–22(e)(4)(vi), and if a covered clearing agency determines not to use reverse stress testing, it generally should indicate why in its policies and procedures. With respect to the references to ''high volatility'' and ''less liquid'' referenced in Rule 17Ad–22(e)(4)(vi), the Commission notes that what would constitute such circumstances may vary across asset classes.

With respect to the definition of ''model validation'' and its use in Rule 17Ad–22(e)(4)(vii), a covered clearing agency generally should consider a person free from influence when that person does not perform functions associated with the clearing agency's models and does not report to a person who performs these functions. The definition of ''model validation'' does not require policies and procedures for separating model review from model development or for maintaining two separate quantitative teams within the clearing agency. With respect to Rule 17Ad–22(e)(4)(vii) and policies and procedures for performing the model validation not less than annually, a covered clearing agency generally should perform the model validation not less than once every twelve months.

With respect to Rule 17Ad–22(e)(4)(viii), the Commission notes that managing a member default may involve hedging open positions, funding collateral so that the positions can be closed out over time, or both. A covered clearing agency may decide to auction or allocate open positions to its participants, but, to the extent possible, a covered clearing agency generally should allow non-defaulting members to continue to manage their positions in the ordinary course. In developing policies and procedures pursuant to Rule 17Ad–22(e)(4)(ix), a covered clearing agency generally should consider specifying the order of use of different types of resources, including (i) assets provided by the defaulting member (such as margin or other collateral), (ii) the guaranty fund of the covered clearing agency, (iii) capital calls on members, and (iv) credit

[310] *See, e.g.,* Arthur S. Goldberger, A Course in Econometrics 122–23 (Harvard Univ. Press, 2003) (defining confidence intervals for parameter estimates).

facilities. A covered clearing agency generally should have policies and procedures that describe (i) how resources that have been depleted as a result of a member default would be replenished over time and (ii) what burdens a non-defaulting member may bear.

5. Rule 17Ad–22(e)(5): Collateral

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(5) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its own or its participants' credit exposures. In addition, Rule 17Ad–22(e)(5) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to include a not-less-than-annual review of the sufficiency of a covered clearing agency's collateral haircuts and concentration limits.[311]

b. Comments Received

Commenters were generally supportive of the proposed approach, but two commenters supported further clarification regarding the type of collateral a covered clearing agency can accept.[312]

One commenter stressed that the ability to accept equity securities as collateral is critically important to its systemic risk mitigation efforts and believes that it should be permitted to continue accepting such securities as collateral within its existing framework.[313] The commenter sought to clarify that an appropriately designed portfolio margining system that permits the use of equity collateral complies with the requirements of proposed Rule 17Ad–22(e)(5) with respect to quality of collateral. In response, the Commission believes that, for a portfolio margining system to comply with Rule 17Ad–22(e)(5), it would necessarily have to consider whether such equity collateral has low credit, liquidity, and market risk. This may require a consideration of whether the collateral carries wrong-way risk. The Commission provides further guidance on this point in Part II.C.5.c below.

One commenter recommended that the Commission consider establishing prescriptive standards for eligible collateral.[314] Among other things, the commenter recommended limiting initial margin to cash in highly liquid currencies, obligations guaranteed by a sovereign that are highly liquid, corporate bonds that are highly liquid, equities that are highly liquid, and gold. The commenter further recommended limiting the assets that a covered clearing agency may accept as initial margin to collateral that a central bank would accept under an ordinary-course facility, is deliverable against the collateralized exposure, or is otherwise subject to conservative risk management practices that the Commission has determined to be adequate to mitigate the incremental risks associated with the collateral because a central bank would not accept it under an ordinary-course facility and it is not deliverable against the collateralized exposure. The commenter further recommended aggregate limits on each type of collateral posted as initial margin. The commenter also recommended that the Commission prohibit a covered clearing agency from accepting as initial margin securities issued by a participant or any of its affiliates.[315]

The Commission is mindful of the concerns raised by the commenter but, given the range of products that covered clearing agencies clear, declines to restrict the types of collateral to the assets identified by the commenter. A covered clearing agency should have flexibility, consistent with the requirements in Rule 17Ad–22(e)(5), to react to changing market conditions. The Commission notes that a covered clearing agency is required under Rule 17Ad–22(e)(5) to have policies and procedures that assess what assets have low credit, liquidity, and market risks in light of its broader risk management framework and, likewise, what haircuts and concentration limits are necessary to effectively manage its credit exposure.

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(5) as proposed.[316] Because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(5), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address collateral:

- Whether it has generally limited the assets it accepts as collateral to those with low credit, liquidity, and market risks;
- whether it has established prudent valuation practices and developed haircuts that are regularly tested and take into account stressed market conditions;
- to reduce the need for procyclical adjustments, whether it has established stable and conservative haircuts that have been calibrated to include periods of stressed market conditions, to the extent practical and prudent;
- whether it has avoided concentrated holdings of certain assets where this would significantly impair the ability to liquidate such assets quickly without significant adverse price affects;
- if it accepts cross-border collateral, whether it has mitigated the risks associated with the use of cross-border collateral and ensured that the collateral can be used in a timely manner; and
- whether it uses a collateral management system that has been well-designed and is operationally flexible.

In assessing what assets have low credit, liquidity, and market risks, a covered clearing agency's policies and procedures also generally should account for wrong-way risk, such as the risk that arises from accepting as initial margin securities issued by a participant or any of its affiliates.[317] Policies and procedures for haircuts and concentration limits generally should account for wrong-way risk by limiting the acceptance of collateral that would likely lose value in the event that the participant providing the collateral defaults. For example, this would be true when accepting equity securities of the participant itself or its affiliates. Further, to reduce the need for procyclical adjustments,[318] a covered clearing agency generally should consider establishing stable and

[311] *See* CCA Standards proposing release, *supra* note 5, at 29528.

[312] *See* CFA Institute at 8; OCC at 9.

[313] *See* OCC at 10.

[314] *See* The Clearing House at 2–3, 9–11.

[315] *See id.* at 10.

[316] *See* Rule 17Ad–22(e)(5), *infra* Part VI.

[317] Wrong-way risk can be either general or specific. General wrong-way risk arises at a CCP when the potential losses of either a participant's portfolio or a participant's collateral is correlated with the default probability of that participant. Specific wrong-way risk arises at a CCP when an exposure to a participant is highly likely to increase when the creditworthiness of that participant is deteriorating.

[318] In this context, procyclicality typically refers to changes in risk-management practices that are positively correlated with market, business, or credit cycle fluctuations that may cause or exacerbate financial stability. While changes in collateral values tend to be procyclical, collateral arrangements can increase procyclicality if haircut levels fall during periods of low market stress and increase during periods of high market stress.

conservative haircuts that are calibrated to include periods of stressed market conditions, to the extent practicable and prudent.

In addition, with respect to policies and procedures for reviewing the sufficiency of its collateral haircuts and concentration limits not less than annually, a covered clearing agency generally should perform the review not less than once every twelve months using persons who are independent from management and have appropriate technical skills.

6. Rule 17Ad–22(e)(6): Margin

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(6) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management on an ongoing basis and regularly reviewed, tested, and verified.[319] Proposed Rule 17Ad–22(e)(6)(i) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in a margin system that, at a minimum, considers and produces margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market. Proposed Rule 17Ad–22(e)(6)(ii) would require a covered clearing agency that provides CCP services to establish implement, maintain and enforce written policies and procedures reasonably designed to ensure that the margin system would mark participant positions to market and collect margin, including variation margin or equivalent charges if relevant, at least daily, and include the authority and operational capacity to make intraday margin calls in defined circumstances. Proposed Rule 17Ad–22(e)(6)(iii) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to calculate margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. The Commission also proposed Rule 17Ad–22(a)(14) to define ''potential future exposure'' to mean the maximum exposure estimated to occur at a future point in time with an established single-tailed confidence level of at least 99% with respect to the estimated distribution of future exposure.[320] Proposed Rule 17Ad–22(e)(6)(iv) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it uses reliable sources of timely price data and procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. Proposed Rule 17Ad–22(e)(6)(v) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the use of an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.

Proposed Rule 17Ad–22(e)(6)(vi) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review, test, and verify its risk-based margin system by conducting backtests at least once each day and conducting a conforming sensitivity analysis of its margin resources and its parameters and assumptions for backtesting at least monthly, and considering modifications to ensure the backtesting practices are appropriate for determining the adequacy of its margin resources. Proposed Rule 17Ad–22(e)(6)(vi) would also require a covered clearing agency's policies and procedures to include conducting a conforming sensitivity analysis more frequently than monthly when the products cleared or markets served display high volatility or become less liquid, and when the size or concentration of positions held by participants increases or decreases significantly. Proposed Rule 17Ad–22(e)(6)(vi) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to report the results of such conforming sensitivity analysis to appropriate decision makers at the covered clearing agency, including its risk management committee or board of directors, and use these results to evaluate the adequacy of and adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management policies and procedures.[321]

With respect to proposed Rule 17Ad–22(e)(6)(vi), the Commission proposed Rule 17Ad–22(a)(1) to define ''backtesting'' to mean an ex-post comparison of actual outcomes with expected outcomes derived from the use of margin models.[322] The Commission received no comments regarding the proposed definition and is adopting it as proposed.[323] The Commission also proposed to define ''sensitivity analysis'' to mean an analysis that involves analyzing the sensitivity of a model to its assumptions, parameters, and inputs.[324] The Commission also proposed to define ''conforming sensitivity analysis'' to mean a sensitivity analysis that 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 and actual and hypothetical portfolios of proprietary positions and, where applicable, customer positions.[325] Under the proposed definition, a conforming sensitivity analysis, when performed by or on behalf of a covered clearing agency involved in activities with a more complex risk profile, would consider the most volatile relevant periods, where practical, that have been experienced by the markets served by the clearing agency. The proposed definition would also require a conforming sensitivity analysis to test 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.[326]

Finally, proposed Rule 17Ad–22(e)(6)(vii) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to require not less than annually a conforming model validation of the

[319] *See* CCA Standards proposing release, *supra* note 5, at 29528–31.

[320] *See id.* at 29529. The Commission received no comments regarding the proposed definition and is adopting it as proposed. Because of other modifications to Rule 17Ad–22(a), the definition of ''potential future exposure'' is being moved to Rule 17Ad–22(a)(13). *See infra* Part VI.

[321] *See id.* at 29530.

[322] *See id.*

[323] *See* Rule 17Ad–22(a)(1), *infra* Part VI.

[324] *See* CCA Standards proposing release, *supra* note 5, at 29530.

[325] *See id.*

[326] *See* CCA Standards proposing release, *supra* note 5, at 29530. The Commission received no comments regarding the proposed definitions, and the Commission is combining them into one definition of ''sensitivity analysis'' to avoid the use of both ''sensitivity analysis'' and ''conforming sensitivity analysis'' in Rule 17Ad–22, as discussed further below. *See infra* Part II.C.6.c.

covered clearing agency's margin system and related models.[327]

b. Comments Received and Commission Response

i. Minimum Liquidation Periods for Initial Margin

One commenter expressed the view that the requirements in Rule 17Ad–22(e)(6) are reasonable.[328] In contrast, another commenter noted that the proposed rules would address initial margin liquidation period requirements through the Commission's supervisory process rather than establish a minimum liquidation period as part of the covered clearing agency's initial margin methodology.[329] The commenter stated that, at a minimum, the Commission should establish minimum liquidation period standards that, as a supervisory matter, are transparent to the public. To promote transparency and international consistency, the commenter also stated that the Commission should modify Rule 17Ad–22(e)(6)(iii) to establish minimum liquidation periods for initial margin calculation that are consistent with international standards.[330]

The Commission is declining to establish minimum liquidation periods as part of a covered clearing agency's initial margin methodology. The Commission recognizes that liquidation periods are a critical assumption for any margin methodology and vary by product type. Accordingly, liquidation periods generally should be tailored to the market conditions and risks of the products being cleared. Because market conditions vary and the risks of the products being cleared over time may change, the Commission believes that a rule or rules establishing criteria for minimum liquidation periods may not be sufficiently tailored to changing circumstances as financial markets evolve. A covered clearing agency generally should consider reviewing liquidation periods as part of its regular review, testing, and verification of its margin system under Rule 17Ad–22(e)(6).

ii. Model Validation

One commenter supported the proposed requirement that a qualified person who is free from influence should perform the annual model validation for credit and margin risk, but the commenter asked the Commission to go further with the ''free from influence'' requirement.[331] The commenter noted the inevitable and indirect pressures employees may face and suggested that the models be validated annually by a qualified and independent organization with no financial stake in the outcome.[332] The Commission previously addressed comments on this topic when it adopted Rule 17Ad–22(b)(4). At that time, the Commission stated that it was not persuaded that model validation must be performed by an outside, independent expert.[333] The Commission believes that objectivity can be preserved where the person performing the model validation is an employee of the covered clearing agency by a variety of means, including, for example, separating employees responsible for model validation from those in the covered clearing agency responsible for the day-to-day functioning of the model and the business lines that use the model. As a general matter, mechanisms ensuring that any employees responsible for model validation remain independent from those responsible for using the model on a day-to-day basis would satisfy this requirement of the rule.

iii. Intraday Margin on a Net Basis and Multilateral Netting Across CCPs

One commenter supported intraday margin on a net basis and encouraged multilateral netting across CCPs. The commenter stated that, to prevent intraday variation margin calls from having destabilizing effects, the Commission should, pending the development of market-wide solutions, require a covered clearing agency making an intraday margin call to simultaneously net variation margin that is payable to participants.[334]

After careful consideration, the Commission declines to accept the commenter's suggestion because it would be inconsistent with the overall approach to Rule 17Ad–22(e). The Commission notes that the circumstances that could give rise to intraday margin calls at a covered clearing agency may vary significantly (*e.g.*, intraday volatility, large changes in participant positions), and may present varied challenges. Although there may be circumstances where it would be appropriate for a covered clearing agency to incorporate policies and procedures such as those suggested by the commenter, the Commission's approach to Rule 17Ad–22(e) is to provide flexibility to covered clearing agencies, subject to their obligations and responsibilities as SROs under the Exchange Act, to design and structure their policies and procedures to take into account the differences among clearing agencies. With respect to intraday margin as a general matter, Rule 17Ad–22(e)(6)(ii) requires policies and procedures for having the capacity to collect intraday margin in defined circumstances, which generally would include margin calls on both a scheduled and unscheduled basis.

c. Final Rule

As previously discussed, the Commission is adopting the definitions of ''backtesting'' and ''potential future exposure'' as proposed.[335] As noted above, the Commission is combining the definitions of ''sensitivity analysis'' and ''conforming sensitivity analysis.'' In addition, the Commission believes that while hypothetical portfolios are often useful and important in conducting a sensitivity analysis, hypothetical portfolios may not be appropriate in certain cases. The Commission is modifying the definition so that, under new Rule 17Ad–22(a)(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. Sensitivity analysis must use actual and, where applicable, hypothetical portfolios that reflect the characteristics of proprietary positions and customer positions; (ii) when performed by or on behalf of a covered clearing agency involved in activities with a more complex risk profile, considers the most volatile relevant periods, where practical, that have been experienced by the markets served by the clearing agency; and (iii) 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

[327] *See* CCA Standards proposing release, *supra* note 5, at 29531; *see also supra* note 305 and accompanying text (modifying the term ''conforming model validation'' to ''model validation,'' and moving it to Rule 17Ad–22(a)(9)).

[328] *See* CFA Institute at 1, 8–9.

[329] *See* The Clearing House at 14.

[330] *See id.* at 3, 14, 15.

[331] *See* Better Markets at 9. The Commission notes that this ''free from influence'' requirement applies to model validation requirements in Rules 17Ad–22(e)(4), (e)(6), and (e)(7). *See* Rule 17Ad–22(a)(9), *infra* Part VI.

[332] *See* Better Markets at 9–10.

[333] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66238.

[334] *See* The Clearing House at 3, 14.

[335] *See supra* notes 320 and 323. Due to modifications to Rule 17Ad–22(a), the definition of ''potential future exposure'' is being moved to Rule 17Ad–22(a)(13). The definition of ''backtesting'' remains in Rule 17Ad–22(a)(1). *See infra* Part VI.

conditions as defined in a covered clearing agency's risk policies.[336] The Commission believes that this reduces the potential for confusion resulting from the use of two separate definitions.

The Commission is also adopting modifications to Rule 17Ad–22(e)(6).[337] First, the Commission is modifying Rule 17Ad–22(e)(6) to remove references to ''conforming'' consistent with the modification to the definitions of ''sensitivity analysis'' discussed above and of ''model validation'' discussed in Part II.C.4.c. Second, to improve clarity, the Commission is modifying Rule 17Ad–22(e)(6)(v) to require policies and procedures that use reliable sources of timely price data and that ''use'' procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. Third, because backtests are conducted with respect to the margin model and not the margin resources themselves, the Commission is modifying Rule 17Ad–22(e)(6)(vi)(A) to replace the phrase ''margin resources'' with ''margin model.'' Fourth, to avoid conflating sensitivity analysis with backtesting, the Commission is modifying Rules 17Ad–22(e)(6)(vi)(B) and (C) to clarify that a sensitivity analysis should be conducted of the margin model and not of margin resources. Specifically, the rule text will replace the phrase ''margin resources'' with the phrase ''margin model.'' The modifications to Rules 17Ad–22(e)(6)(vi)(A), (B), and (C) are consistent with the discussion of the proposed rule in the CCA Standards proposing release.[338] Fifth, the Commission is modifying Rule 17Ad–22(e)(6)(vi)(C) to replace ''and'' with ''or'' so that the criteria for conducting analysis more frequently than monthly are disjunctive rather than conjunctive, since the criteria described may not be correlated to each other. This modification is consistent with the Commission's description of the proposed rule in the CCA Standards proposing release.[339]

Further, because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(6), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures for margin:

- Whether its margin system has established margin levels commensurate with the risks and particular attributes of each product, portfolio, and market it serves;
- whether it has a reliable source of timely price data for its margin system and policies and procedures, including sound valuation models, for addressing circumstances in which pricing data are not readily available or reliable;
- whether it has adopted initial margin models and parameters that are risk-based and generate margin requirements sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default;
- whether initial margin meets an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure; whether, if it calculates margin at the portfolio level, this applies to each portfolio's distribution of future exposure; whether, if it calculates margin at more granular levels, such as at the sub-portfolio level or by product, this is met for the corresponding distributions of future exposure; and whether the model (i) uses a conservative estimate of the time horizons for the effective hedging or close out of the particular types of products cleared by the covered clearing agency (including in stressed market conditions), (ii) has an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products, and (iii) to the extent practicable and prudent, limits the need for destabilizing, procyclical changes;
- whether it marks participant positions to market and collects variation margin at least daily to limit the build-up of current exposures and has the authority and operational capacity to make intraday margin calls and payments, both scheduled and unscheduled, to participants;
- in calculating margin requirements, whether it allows offsets or reductions in required margin across products that it clears or between products that it and another clearing agency clear, if the risk of one product is significantly and reliably correlated with the risk of the other product; and where two or more clearing agencies are authorized to offer cross-margining, whether they have appropriate safeguards and harmonized overall risk management systems;
- whether it analyzes and monitors its model performance and overall margin coverage by conducting rigorous daily backtesting and at least monthly, and more frequent when appropriate, sensitivity analysis; whether it regularly conducts an assessment of the theoretical and empirical properties of its margin model for all products it clears; in conducting sensitivity analysis of the model's coverage, whether the covered clearing agency has taken into account a wide range of parameters and assumptions that reflect possible market conditions, including the most volatile periods that have been experienced by the markets the covered clearing agency serves and extreme changes in the correlations between prices; and
- whether it regularly reviews and validates its margin system.

With respect to Rule 17Ad–22(e)(6)(iii), and policies and procedures related to margin calculations, a covered clearing agency generally should consider whether it calculates margin sufficient to cover its potential future exposure to each participant.

With respect to Rule 17Ad–22(e)(6)(iv) and policies and procedures for price data, the Commission notes that in selecting price data sources, a covered clearing agency generally should consider the ability of the provider to provide data in a variety of market conditions, including periods of market stress, and not select data sources based on their cost alone to ensure that such price data sources are reliable.

With respect to Rule 17Ad–22(e)(6)(v) and policies and procedures for measuring portfolio effects, the Commission notes that measuring portfolio effects across products means a covered clearing agency generally should take into account netting procedures or offsets through which credit exposure may be reduced in measuring credit exposure, including the use of portfolio margining procedures across products where applicable.

With respect to Rule 17Ad–22(e)(6)(vii) and policies and procedures for performing the model validation not less than annually, a covered clearing agency generally should perform the model validation not less than once every twelve months using persons who are independent from management and have appropriate technical skills.

7. Rule 17Ad–22(e)(7): Liquidity Risk

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(7) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne

[336] *See* Rule 17Ad–22(a)(16), *infra* Part VI.

[337] *See* Rule 17Ad–22(e)(6), *infra* Part VI.

[338] *See* CCA Standards proposing release, *supra* note 5, at 29530–31.

[339] *See id.* at 29530.

by it, by meeting, at a minimum, the ten requirements specified in the rule.[340]

Proposed Rule 17Ad–22(e)(7)(i) would require that a covered clearing agency's policies and procedures be reasonably designed to ensure that it maintains sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that includes the default of the participant family that would generate the largest aggregate payment obligation for it in extreme but plausible market conditions.[341]

Proposed Rule 17Ad–22(e)(7)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it holds qualifying liquid resources sufficient to meet the minimum liquidity resource requirement in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members.[342] The Commission also proposed Rule 17Ad–22(a)(15) to define ''qualifying liquid resources,'' which would include three types of assets, in each relevant currency:

- Cash held either at the central bank of issue or at creditworthy commercial banks;
- assets that are readily available and convertible into cash through either:
  - Prearranged funding arrangements without material adverse change limitations, such as committed lines of credit, foreign exchange swaps, and repurchase agreements, or
  - other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and
- other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank.[343]

Proposed Rule 17Ad–22(e)(7)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it uses accounts and services at a Federal Reserve Bank, pursuant to Section 806(a) of the Clearing Supervision Act,[344] or other relevant central bank, when available and where determined to be practical by the board of directors of the covered clearing agency, to enhance its management of liquidity risk.

Proposed Rule 17Ad–22(e)(7)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it undertakes due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has sufficient information to understand and manage the liquidity provider's liquidity risks, and the capacity to perform as required under its commitments to provide liquidity.

Proposed Rule 17Ad–22(e)(7)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that the covered clearing agency maintains and, on at least an annual basis, tests with each liquidity provider, to the extent practicable, its procedures and operational capacity for accessing each type of relevant liquidity resource.

Proposed Rule 17Ad–22(e)(7)(vi)(A) through (C) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement of proposed Rule 17Ad–22(e)(7)(i) by (A) conducting a stress test of its liquidity resources at least once each day using standard and predetermined parameters and assumptions; (B) conducting a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate for determining the covered clearing agency's identified liquidity needs and resources in light of current and evolving market conditions at least once each month; and (C) conducting a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources more frequently when products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by participants increases significantly, or in other circumstances described in the covered clearing agency's policies and procedures. Proposed Rule 17Ad–22(e)(7)(vi)(D) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in reporting the results of the analyses performed under proposed Rule 17Ad–22(e)(7)(vi)(B) and (C) to appropriate decision makers, including the risk management committee or board of directors, at the covered clearing agency for use in evaluating the adequacy of and adjusting its liquidity risk management framework.[345]

Proposed Rule 17Ad–22(e)(7)(vii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in performing an annual or more frequent conforming model validation of its liquidity risk models.[346]

Proposed Rule 17Ad–22(e)(7)(viii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to address foreseeable liquidity shortfalls that would not be covered by its liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.

Proposed Rule 17Ad–22(e)(7)(ix) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to describe its process for replenishing any liquid resources that it may employ during a stress event.[347]

Finally, proposed Rule 17Ad–22(e)(7)(x) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it, at least once a year, evaluates the feasibility of maintaining sufficient liquid resources at a minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the two participant families that would potentially cause the largest

[340] *See* CCA Standards proposing release, *supra* note 5, at 29531–37.

[341] *See id.* at 29531.

[342] *See id.*

[343] *See id.*

[344] *See* 12 U.S.C. 5465(a).

[345] *See* CCA Standards proposing release, *supra* note 5, at 29534.

[346] *See id.; see also supra* notes 275–305 and accompanying text (discussing generally the requirements accompanying the definition of ''model validation'').

[347] *See* CCA Standards proposing release, *supra* note 5, at 29534.

aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions if the covered clearing agency provides CCP services and is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile.

b. Comments Received and Commission Response

i. General Approach

Six commenters expressed general support for the proposed rule.[348] Of these, one commenter stated that proposed Rule 17Ad–22(e)(7) was prudent and appropriate in light of the need for covered clearing agencies to maintain adequate liquidity to minimize systemic risks and that, by requiring ongoing testing and monitoring of underlying assumptions, covered clearing agencies should be able to identify potential problems with sufficient time to respond without significant disruptions.[349] Four commenters expressed support for the Commission's proposed approach to qualifying liquid resources other than committed funding arrangements,[350] which is discussed further below in Part II.C.7.b.iii.

ii. Due Diligence for Liquidity Providers

Two commenters stated that the requirement in proposed Rule 17Ad–22(e)(7)(iv) regarding policies and procedures to perform due diligence of liquidity providers must take into account the context of the due diligence being performed.[351] One of these commenters stated that commercial lenders are not likely to provide their borrowers with non-public information on their internal policies and controls,[352] and that accordingly covered clearing agencies should not be expected to evaluate a commercial lender's internal risk controls.[353] First, in the experience of Commission staff, liquidity facilities may not consist only of traditional commercial loans. For example, a covered clearing agency may seek out committed repurchase agreement facilities with counterparties other than traditional commercial lenders. In such a circumstance, the commenter's experience with such counterparties may be different than with a traditional commercial lender.[354] Accordingly, in contrast to the commenter's assertion, a covered clearing agency may engage in a relationship with a liquidity provider that is not a typical commercial lender and therefore may be more willing to facilitate due diligence. Second, while the Commission acknowledges that a lender may choose not to provide their borrowers with non-public information on certain internal policies and controls, the proposed rule does not require a covered clearing agency's policies and procedures regarding due diligence for liquidity providers to specifically review all internal policies and controls. Rather, it requires due diligence policies and procedures that confirm the covered clearing agency has a reasonable basis to believe that a liquidity provider understands and manages the liquidity provider's liquidity risks and the capacity to perform as required under its commitments to provide liquidity to the covered clearing agency. If, in performing due diligence consistent with its policies and procedures formulated in accordance with the rule, a covered clearing agency cannot confirm that it has a reasonable basis to believe both of the required criteria, then the covered clearing agency would not have a liquidity provider consistent with Rule 17Ad–22(e)(7)(iv).

The second commenter stated that it is not appropriate to require a covered clearing agency to perform due diligence on a central bank acting as its liquidity provider and requests that the rules clarify that the requirements under Rule 17Ad–22(e)(7)(iv) do not apply where a central bank is a liquidity provider for a covered clearing agency.[355] The Commission does not believe that the rule needs to be modified to account for this circumstance, however, as the policies and procedures of the covered clearing agency could account for the different circumstances that arise when a central bank is acting as a liquidity provider.

A third commenter expressed the view that the Commission should clarify the due diligence requirements of proposed Rule 17Ad–22(e)(7)(iv) to expressly require a covered clearing agency to take into account the potential wrong-way risk associated with reliance on participants or their affiliates as liquidity providers.[356] The commenter further stated that the Commission should take additional steps to mitigate wrong-way risk by requiring a covered clearing agency to ensure the appropriate diversification of its liquidity providers and limit its reliance on its participants or their affiliates as potential sources of liquidity.[357] The Commission believes that diversifying liquidity providers may be helpful because such diversification would result in less concentrated, and potentially more manageable, financial commitments among a covered clearing agency's liquidity providers. For example, a covered clearing agency generally should conduct an assessment of the liquidity provider's business in light of both the covered clearing agency's own business and the composition of its existing liquidity providers. In turn, a covered clearing agency could assess the likelihood that a liquidity provider might be unable to meet its own liquidity demands at the same time as the covered clearing agency was facing a liquidity shortfall and attempting to draw on liquidity from its liquidity provider, allowing the covered clearing agency to account for the potential wrong-way risk associated with reliance on participants or their affiliates as liquidity providers. Although there may be circumstances where it would be appropriate for a covered clearing agency to incorporate the policies and procedures such as those suggested by the commenter, the Commission's approach to Rule 17Ad–22(e) focuses on principles. The circumstances may vary, and a covered clearing agency should appropriately manage its risks as they arise, considering the full set of tools available and its risk management framework. Accordingly, after careful consideration, the Commission declines to accept the commenter's suggestion with respect to wrong-way risk because it would be inconsistent with the overall approach to Rule 17Ad–22(e).[358]

In addition, the commenter stated that the reliance on committed funding arrangements in proposed Rule 17Ad–22(a)(15) may lead to this overreliance on participants or their affiliates for liquidity.[359] The Commission addresses

[348] *See, e.g.,* Barnard at 1 (supporting the proposal, especially as to its proposed financial risk management and liquidity risk requirements); CFA Institute at 9; CME at 4; DTCC at 6; The Clearing House at 3, 13; OCC at 11.

[349] *See* CFA Institute at 9.

[350] *See* CME at 4; DTCC at 6 (noting the appropriate balance in the proposed rule between the need to have sufficient reliable liquidity resources to meet ongoing settlement obligations in the event of participant default, and the realities of the availability and costs of committed liquidity funding); OCC at 11 (supporting the expansion of qualifying liquid resources beyond committed funding arrangements); The Clearing House at 3, 13 (noting that the proposed rule's use of highly reliable funding arrangements, in addition to committed arrangements, provides needed flexibility and is consistent with the PFMI).

[351] *See* DTCC at 7; LCH at 4.

[352] *See* DTCC at 7.

[353] *See id.*

[354] *See infra* Part II.C.7.b.iii (further discussing such repurchase agreement facilities).

[355] *See* LCH at 4.

[356] *See* The Clearing House at 13.

[357] *See id.* at 3.

[358] *See supra* Part II.B.

[359] *See* The Clearing House at 3.

this aspect of the comment below in Part II.C.7.b.iii.

iii. Qualifying Liquid Resources

Commenters generally supported the Commission's proposed approach to determining qualifying liquid resources. One commenter supported the Commission's overall approach and, in particular, the inclusion of assets that are readily available and convertible into cash through repurchase agreements.[360] Another commenter supported the Commission's approach to the definition of ''qualifying liquid resources,'' and expressed the view that expansion of qualifying liquid resources beyond committed funding arrangements is necessary to ensure the proper functioning of covered clearing agencies.[361] The commenter noted that a committed liquidity facility would generally be preferable over a non-committed facility, but the commenter also acknowledged that other aspects of a facility (*e.g.*, size or cost of the facility) may tip the balance toward selection of the non-committed facility. In particular, the commenter emphasized the unique liquidity needs of clearing entities, the limited number and capacity of liquidity providers in the market that are willing and able to participate in committed liquidity facilities for clearing entities, and the commercial and regulatory realities that could constrain the availability of committed facilities for covered clearing agencies.[362] The Commission is mindful of these concerns, but notes that policies and procedures providing for the use of uncommitted facilities must also satisfy the terms of Rule 17Ad–22(e)(15) to address general business and operational risk that could arise from such uncommitted facilities.

One commenter stated that requiring covered clearing agencies to rely on committed funding arrangements in all cases could increase a covered clearing agency's reliance on its participants or their affiliated banks and potentially exacerbate a liquidity crisis by transferring the risk of a covered clearing agency to its liquidity providers and vice versa.[363] However, the comment assumes that the rule prohibits reliance on other types of facilities or prearranged funding arrangements, which is not the case. To some degree, the purpose of a liquidity facility is to transfer risk from the covered clearing agency to its liquidity providers. Further, the resources described in the definition of ''qualifying liquid resources'' should be viewed as part of a hierarchy, where cash should be the primary source of liquid resources, followed first by prearranged funding arrangements and last by other assets readily available and eligible for pledging to a relevant central bank in a jurisdiction that permits such pledges. In addition, within the class of prearranged funding arrangements, available committed arrangements without material adverse change (''MAC'') provisions generally should be obtained before seeking to obtain other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the covered clearing agency's board of directors. The Commission believes that a covered clearing agency generally should consider having policies and procedures that establish a preference for cash and prearranged funding arrangements, but the Commission acknowledges that a covered clearing agency's policies and procedures may need to account for the extent to which such resources are available to them given the size of their liquidity demands.

With respect to whether and how repurchase agreements might fit within the definition of qualifying liquid resources, one commenter stated that prearranged and highly reliable funding arrangements may be demonstrated through non-committed repurchase agreement facilities with major bank-dealers.[364] According to the commenter, a covered clearing agency relying on such a facility would need to ensure that it is structured appropriately to be highly reliable, taking into account the fact that a facility may be used in a clearing member default scenario in extreme market circumstances. The commenter also stated that a covered clearing agency's procedures for making draws on uncommitted repurchase facilities should specifically contemplate the timing of close-out arrangements for defaulted clearing members and should provide for draws on such facilities to be made by specified times during business day mornings to ensure that dealer banks have sufficient time to facilitate liquidation of the U.S. Treasury securities. The commenter believed this approach would be fully consistent with the PFMI.[365] The Commission notes that this type of approach, reflected in the policies and procedures of a covered clearing agency as part of a broader attempt to define qualifying liquid resources comprehensively, could be consistent with the Commission's definition of prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency, assuming it was subject to a not less than annual review.[366] The Commission believes that the board of directors of a covered clearing agency generally should rely on rigorous analysis of the properties of a prearranged funding arrangement, in making a determination that it was highly reliable in extreme but plausible market conditions.

With respect to the rule's reference to ''material adverse change provisions,'' two commenters recommended that the reference be removed. One commenter noted that the proposed rule text appears to be in tension with the preamble of the CCA Standards proposing release because it includes, among qualifying liquid resources, prearranged funding arrangements other than committed arrangements, but only where such arrangements have no MAC provisions.[367] The commenter stated that, by definition, a non-committed facility is uncommitted and therefore MAC provisions are inapplicable.[368] The commenter further noted that this is a liquidity standard not set forth in the PFMI, which will lead to confusion and inconsistency in attempting to apply the standard. The commenter recommended that the reference to MAC clauses in the proposed definition of ''qualifying liquid resources'' be removed.[369] The second commenter similarly recommended that the Commission remove the reference to MAC clauses in the definition of qualifying liquid resources for prearranged funding arrangements other than committed arrangements, noting that Master Repurchase Agreements do not have MAC clauses because they are uncommitted facilities.[370]

In response to the comments, the Commission is modifying the proposed definition of ''qualifying liquid resources'' so that only paragraph (A) includes a prohibition on MAC clauses. For uncommitted facilities, because they are by their terms uncommitted, the party providing an uncommitted facility generally would have no need to include a MAC clause. In contrast, a party providing a committed facility could choose to contract into an

[360] *See* CME at 4.

[361] *See* OCC at 11.

[362] *See id.* at 11–12.

[363] *See* The Clearing House at 13.

[364] *See* ISDA at 4.

[365] *See id.*

[366] Such policies and procedures should also address the due diligence of the liquidity provider, as discussed above. *See supra* Part II.C.7.b.ii.

[367] *See* ISDA at 5.

[368] *See id.*

[369] *See id.*

[370] *See* CME at 4.

arrangement with or without a MAC clause, at the party's discretion. As noted above, the Commission believes that a covered clearing agency generally should consider having policies and procedures that establish a preference for cash and prearranged funding arrangements. Within the category of prearranged funding arrangements, the Commission also believes that a covered clearing agency generally should preference committed arrangements over other types of prearranged funding arrangements, and that within the category of committed arrangements, a covered clearing agency generally should preference those without MAC clauses over those with MAC clauses. The Commission notes that a covered clearing agency would, when relying on a committed funding arrangement with a MAC clause pursuant to the definition of ''qualifying liquid resources,'' also need to have policies and procedures demonstrating that such committed facility was a prearranged funding arrangement determined to be highly reliable even in extreme but plausible market conditions by the board of directors following a review conducted for this purpose no less than annually. The Commission also believes that, as a general matter, policies and procedures regarding qualifying liquid resources, including those related to prearranged funding arrangements, would constitute a proposed rule change under Section 19(b) of the Exchange Act and, for designated clearing agencies, an advance notice under the Clearing Supervision Act.

c. Final Rule

The Commission is adopting two modifications to the definition of ''qualifying liquid resources'' and, because of other modifications to Rule 17Ad–22(a), moving the definition to Rule 17Ad–22(a)(14).[371] The Commission is modifying paragraph (ii) so that the reference to MAC clauses is tied to committed arrangements rather than prearranged funding arrangements more generally, as previously described in Part II.C.7.b.iii. In addition, because not all central banks permit pledging certain assets that are readily available and eligible for pledging, the Commission is modifying paragraph (iii) to clarify that practices with respect to routine credit at a central bank may vary across jurisdictions.

The Commission is also adopting Rule 17Ad–22(e)(7) with modifications.[372] First, the Commission is modifying Rule 17Ad–22(e)(4)(vi)(A) to refer to ''stress testing'' rather than ''a stress test'' to improve consistency with the definition of ''stress testing'' in Rule 17Ad–22(a)(17). Second, the Commission is modifying Rule 17Ad–22(e)(7)(vi)(C) in two ways. To improve consistency with Rule 17Ad–22(e)(4)(vi)(C), the Commission is adding ''or'' to link ''display high volatility'' with ''become less liquid'' because these concepts are intended to describe events related to the products cleared or markets served. This change corrects a typographical error in the CCA Standards proposing release.[373] The Commission is also replacing ''and'' with ''or'' in Rule 17Ad–22(e)(7)(vi)(C) so that the criteria for conducting analysis more frequently than monthly are disjunctive rather than conjunctive, since the list of criteria is open to other appropriate circumstances described in a covered clearing agency's policies and procedures and may not be correlated. Third, the Commission is making two modifications in adopting Rule 17Ad–22(e)(7)(vi)(D) to correct technical errors in the proposed rule text: (i) References to paragraphs (e)(6)(vii)(B) and (C) will be changed to paragraphs (e)(7)(vi)(B) and (C) respectively; and (ii) the rule will refer to the covered clearing agency's ''liquidity'' risk management framework, rather than its ''credit'' risk management framework. These modifications are consistent with the Commission's discussion of the proposed rule in the CCA Standards proposing release.[374] Fourth, the Commission is striking ''conforming'' from Rule 17Ad–22(e)(7)(vii) to be consistent with the modifications to the definition of ''model validation'' discussed in Part II.C.4.c.

Further, because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(7), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address liquidity risk:

- Whether it has a robust framework to manage its liquidity risks from its participants, settlement banks, nostro agents, custodian banks, liquidity providers, and other entities;
- whether it has effective operational and analytical tools to identify, measure, and monitor its settlement and funding flows on an ongoing and timely basis, including its use of intraday liquidity;
- whether it maintains sufficient liquid resources in all relevant currencies to settle securities-related payments, make required variation margin payments, and meet other payment obligations on time with a high degree of confidence under a wide range of potential stress scenarios, including but not limited to the default of the participant and its affiliates that would generate the largest aggregate payment obligation to the covered clearing agency in extreme but plausible market conditions;
- for the purpose of meeting its minimum liquid resource requirement, whether its qualifying liquid resources in each currency include cash at the central bank of issue and at creditworthy commercial banks, committed lines of credit, committed foreign exchange swaps, and committed repos, as well as highly marketable collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions;
- whether it supplements its qualifying liquid resources with other forms of liquid resources and, if so, whether these liquid resources are in the form of assets likely to be saleable or acceptable as collateral for lines of credit, swaps, or repos on an ad hoc basis following a default, even if this cannot be reliably prearranged or guaranteed in extreme market conditions;
- if it does not have access to routine central bank credit, whether it takes account of what collateral is typically accepted by the relevant central bank, as such assets may be more likely to be liquid in stressed circumstances, and does not assume the availability of emergency central bank credit as a part of its liquidity plan;
- whether it obtains a high degree of confidence, through rigorous due diligence, that each provider of its minimum required qualifying liquid resources, whether a participant of the FMI or an external party, has sufficient information to understand and to manage its associated liquidity risks, and that it has the capacity to perform as required under its commitment;
- where relevant to assessing a liquidity provider's performance reliability with respect to a particular currency, whether a liquidity provider's potential access to credit from the central bank of issue may be taken into account;
- whether it regularly tests its procedures for accessing its liquid resources at a liquidity provider;

[371] *See* Rule 17Ad–22(a)(14), *infra* Part VI.

[372] *See* Rule 17Ad–22(e)(7), *infra* Part VI.

[373] *See* CCA Standards proposing release, *supra* note 5, at 29534.

[374] *See id.*

• if it has access to central bank accounts, payment services, or securities services, whether it uses these services, where practical, to enhance its management of liquidity risk;

• whether it determines the amount and regularly tests the sufficiency of its liquid resources through rigorous stress testing; whether it has clear procedures to report the results of its stress tests to appropriate decision makers at the covered clearing agency and to use these results to evaluate the adequacy of and adjust its liquidity risk-management framework;

• in conducting stress testing, whether it considers a wide range of relevant scenarios, including relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions;

• whether such scenarios take into account the design and operation of the covered clearing agency, include all entities that might pose material liquidity risks to the covered clearing agency (such as settlement banks, nostro agents, custodian banks, liquidity providers, and linked clearing agencies), and where appropriate, cover a multiday period, and, whether, in all cases, it documents its supporting rationale for, and has appropriate governance arrangements relating to, the amount and form of total liquid resources it maintains;

• whether it has explicit rules and procedures that enable the covered clearing agency to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations on time following any individual or combined default among its participants;

• whether these rules and procedures address unforeseen and potentially uncovered liquidity shortfalls and should aim to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations; [375] and

• whether these rules and procedures indicate the covered clearing agency's process to replenish any liquidity resources it may employ during a stress event, so that it can continue to operate in a safe and sound manner.

In addition, with respect to creditworthy commercial banks under Rule 17Ad–22(a)(14), a covered clearing agency generally should assess the creditworthiness of its commercial banks, such as by considering their particular circumstances in which they operate and the markets which they service.

With respect to assets convertible into cash under Rule 17Ad–22(a)(14), the Commission notes that the mere ownership of assets that a covered clearing agency may consider readily available and convertible into cash—based on factors such as the historical volume of trading in a particular market for such asset—depending on the circumstances may not count towards its ''qualifying liquid resources'' unless one of the prearranged funding arrangements in place would allow the covered clearing agency to receive cash in a timely manner. With respect to the requirements for qualifying liquid resources more generally, the Commission notes that a covered clearing agency generally should consider the lower of the value of the assets capable of being pledged and the amount of the commitment (or the equivalent availability under a highly reliable prearranged facility) as the amount that counts towards qualifying liquid resources in the event there is any expected difference between the two.[376]

With respect to Rule 17Ad–22(e)(7)(ii), the Commission notes that, for example, if payment obligations were denominated in U.S. dollars, the minimum liquidity resource requirement would refer to a U.S. dollar amount.

With respect to Rule 17Ad–22(e)(7)(iii) and access to routine credit at a central bank, the Commission notes that a covered clearing agency is not required to use central bank account services but, rather, is required to establish, implement, maintain and enforce written policies and procedures reasonably designed facilitate such use when available and practical. As noted above, whether the services are available or considered to be practical may vary across jurisdictions.[377] Access to routine credit at a relevant central bank, and the collateral required by such central bank to be posted to secure a loan, may be determined at the discretion of the central bank.

With respect to Rule 17Ad–22(e)(7)(iv) and the policies and procedures for due diligence required thereunder, ''due diligence'' has the same meaning as is commonly understood by market participants. A covered clearing agency generally should not rely solely on representations made by a liquidity provider but instead should conduct an assessment of the liquidity provider's business, in light of the covered clearing agency's own business and the composition of its existing liquidity providers. Policies and procedures to develop a reasonable basis under Rule 17Ad–22(e)(7)(iv) could include interviewing the liquidity provider's staff and reviewing both public and non-public documents that would allow the covered clearing agency to gather information about relevant factors, including but not limited to the strength of the liquidity provider's financial condition, its risk management capabilities, and its internal controls.

With respect to Rule 17Ad–22(e)(7)(v), a covered clearing agency generally should test its access to liquidity resources by verifying that a liquidity provider is able to provide the relevant liquidity resources in the manner intended under the terms of a funding arrangement and without undue delay by, for example, promptly funding a draw on the covered clearing agency's credit facility. The Commission recognizes that testing procedures also could include test draws funded by the liquidity provider or tests of electronic connectivity between the covered clearing agency and the liquidity provider. Testing with liquidity providers may not always be practicable in the absence of committed liquidity arrangements. In addition, a covered clearing agency generally should conduct the testing not less than once every twelve months.

[375] The Commission notes that while Rule 17Ad–22(e)(7)(viii) requires policies and procedures to address foreseeable liquidity shortfalls, a covered clearing agency also generally should consider how best to identify unforeseen and potentially uncovered liquidity shortfalls. For example, a covered clearing agency may be able to identify unforeseen liquidity shortfalls using hypothetical stress scenarios and reverse stress testing of liquid resources.

[376] For purposes of complying with Rule 17Ad–22(e)(7)(ii), factors that may be relevant for a covered clearing agency to consider when defining its qualifying liquid resources could include (i) the portion of its default fund that is held as cash, (ii) the portion of its default fund that is held as securities, (iii) the portion of any excess default fund contributions held as cash that could be used by the covered clearing agency to meet liquidity needs, (iv) the portion of any excess default fund contributions held as securities that could be used by the covered clearing agency to meet liquidity needs, (v) the amount at any given time of securities or cash delivered by members that a covered clearing agency may be able to use to meet liquidity needs upon the default of a member, and (vi) the borrowing limits under any committed funding arrangement.

[377] The Commission notes that the term ''central bank'' is not limited to a Federal Reserve Bank. A covered clearing agency based in or operating outside of the United States that has access to routine credit at other central banks would be able to take this into consideration when assessing the amount of its qualifying liquid resources.

With respect to Rule 17Ad–22(e)(7)(vii) and policies and procedures for performing the model validation not less than annually, a covered clearing agency generally should perform the model validation not less than once every twelve months.

With respect to Rule 17Ad–22(e)(7)(viii) and foreseeable liquidity shortfalls, foreseeable liquidity shortfalls could include potential shortfalls that can be identified through testing a covered clearing agency's financial resources.[378] The Commission recognizes that foreseeable liquidity shortfalls could occur even when a covered clearing agency is in compliance with the proposed requirements of Rule 17Ad–22(e)(7), such as when the covered clearing agency is unable to obtain liquidity pursuant to prearranged funding arrangements that are uncommitted.

With respect to Rule 17Ad–22(e)(7)(x), a covered clearing agency is not required to adopt a ''cover two'' standard for liquidity risk but is responsible for undertaking such an analysis at least once a year, pursuant to the covered clearing agency's policies and procedures under Rule 17Ad–22(e)(7)(x). In making any determination regarding the sizing of a covered clearing agency's liquid resources to exceed ''cover one,'' a covered clearing agency could consider, among other things, (i) the business model of the covered clearing agency, such as a utility model (which may be also referred to as an ''at cost'' model) versus a for-profit model; (ii) diversification of its members' business models as they impact the members' ability to supply liquidity to the covered clearing agency; (iii) concentration of membership of the covered clearing agency, as the breadth of the membership may affect the ability to draw liquidity from members; (iv) levels of usage of the covered clearing agency's services by members, as the concentration of demand on the covered clearing agency's services may bear upon potential liquidity needs; (v) the relative concentration of members' market share in the cleared products; (vi) the degree of alignment of interest between member ownership of the covered clearing agency and the provision of funding to the covered clearing agency; and (vii) the nature of, and risks associated with, the products cleared by the covered clearing agency.

8. Rule 17Ad–22(e)(8): Settlement Finality

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(8) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.[379]

b. Comments Received

The Commission received no comments regarding the proposed rule.

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(8) with one modification.[380] To remove potential ambiguity as to the timing of settlement finality under the rule, the Commission is modifying Rule 17Ad–22(e)(8) to state that the point at which settlement is final is ''to be'' no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time. As modified, Rule 17Ad–22(e)(8) identifies the point at which settlement is final, which must be defined in a covered clearing agency's written policies and procedures, and removes the potential ambiguity that could have allowed an alternative interpretation of the rule that did not clearly link the concept of settlement finality to ''no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.''

Further, because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(8), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address settlement finality:

- Whether its policies and procedures clearly define the point at which settlement is final;
- whether it completes final settlement no later than the end of the value date, and preferably intraday or in real time, to reduce settlement risk; and
- whether it clearly defines the point after which unsettled payments, transfer instructions, or other obligations may not be revoked by a participant.

In addition, clearly defining the point at which settlement is final might include adopting policies and procedures (i) establishing that a cut-off point after which unsettled payments, transfer instructions, or other obligations may not be revoked by a clearing member and (ii) providing clearing members with guidance regarding extensions for members with operating problems, such as the approval or duration of such extensions. Policies or procedures creating material uncertainty regarding when final settlement will occur or that permit the back-dating or ''as of'' dating of a transaction that settles after the end of the day on which the payment or obligation is due generally would not comply with Rule 17Ad–22(e)(8). With respect to policies and procedures requiring intraday or real-time finality to reduce risk, such efforts would be necessary and appropriate when, for example, the risks in question are material or when the opportunity to require intraday or real-time finality is available and would be reasonable, whether in economic or other terms, to implement.

9. Rule 17Ad–22(e)(9): Money Settlements

As proposed, Rule 17Ad–22(e)(9) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to conduct its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency, and minimizes and manages credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency.[381]

The Commission received no comments regarding the proposed rule and is adopting it as proposed.[382] Because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(9), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address money settlements:

- Whether it conducts its money settlements in central bank money, where practical and available, to avoid credit and liquidity risks;
- if it does not use central bank money, whether it conducts its money settlements using a settlement asset with little or no credit or liquidity risk;

[378] *See supra* note 375.

[379] *See* CCA Standards proposing release, *supra* note 5, at 29537–38.

[380] *See* Rule 17Ad–22(e)(8), *infra* Part VI.

[381] *See* CCA Standards proposing release, *supra* note 5, at 29538–39.

[382] *See* Rule 17Ad–22(e)(9), *infra* Part VI.

• if it settles in commercial bank money, whether it monitors, manages, and limits its credit and liquidity risks arising from commercial settlement banks by, for example, establishing and monitoring adherence to strict criteria for its settlement banks that take account of, among other things, their regulation and supervision, creditworthiness, capitalization, access to liquidity, and operational reliability, and whether it monitors and manages the concentration of credit and liquidity exposures to its commercial settlement banks;

• if it conducts money settlements on its own books, whether it minimizes and strictly controls its credit and liquidity risks; and

• whether its legal agreements with any settlement banks state clearly when transfers on the books of individual settlement banks are expected to occur, that transfers are to be final when effected, and that funds received are transferable as soon as possible at a minimum by the end of the day, and ideally intraday, to enable the covered clearing agency and its participants to manage credit and liquidity risks.

While Rule 17Ad–22(e)(9) would permit a covered clearing agency to use multiple settlement banks to monitor and manage concentration of payments among its commercial settlement banks, in such circumstances its policies and procedures generally should consider the degree to which concentration of a covered clearing agency's exposure to a commercial settlement bank is affected or increased by multiple relationships with the settlement bank, including (i) where the settlement bank is also a participant in the covered clearing agency, or (ii) where the settlement bank provides back-up liquidity resources to the covered clearing agency.

In addition, the Commission believes that a covered clearing agency generally should consider using commercial bank money only when central bank money is not practicable or available. In some cases, the use of central bank money may not be practical because direct access to central bank accounts and payment services may not be available to all clearing agencies or members in all circumstances. For example, when a covered clearing agency operates in multiple currencies, certain central bank accounts may not be operational at the time money settlements occur.

10. Rule 17Ad–22(e)(10): Physical Delivery Risks

As proposed, Rule 17Ad–22(e)(10) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments and operational practices that identify, monitor, and manage the risk associated with such physical deliveries.[383]

The Commission received no comments regarding the proposed rule and is adopting it as proposed.[384] Because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(10), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address physical delivery risks:

• Whether its rules clearly state its obligations with respect to the delivery of physical instruments or commodities; and

• whether it has identified, monitored, and managed the risks and costs associated with the storage and delivery of physical instruments or commodities.

The Commission notes that practices regarding physical delivery vary based on the types of assets that a covered clearing agency settles. Nevertheless, a covered clearing agency generally should consider having policies and procedures that state clearly which asset classes it accepts for physical delivery and the procedures surrounding the delivery of each. In addition, physical delivery may require the involvement of multiple parties, including the clearing agency itself, its members, customers, custodians, and transfer agents. In particular, a covered clearing agency generally should consider having policies and procedures that address its relationship with transfer agents generally and, in particular, with respect to instructions for deposit and withdrawal at a custodian.

A covered clearing agency could employ several different arrangements pursuant to the requirements of Rule 17Ad–22(e)(10). For example, if a covered clearing agency takes physical delivery of securities from its members in return for payments of cash, then it generally should inform its members of the extent of the clearing agency's obligations to make payment. A covered clearing agency generally should employ policies and procedures that clearly state any obligations it incurs to members for losses incurred in the delivery process. Policies and procedures generally should also clearly state rules or obligations regarding definitions for acceptable physical instruments, the location of delivery sites, rules for storage and warehouse operations, and the timing of delivery. Such policies and procedures can help mitigate operational risks associated with physical deliveries by including provisions to review and assess the qualifications of potential employees, including, among other things, reference and background checks and employee training. Such policies and procedures could also relate to theft, loss, counterfeiting, deterioration of or damage to assets, and employee duties for the recordkeeping for and holding of physical assets.

11. Rule 17Ad–22(e)(11): CSDs

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(11)(i) would require a covered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain securities in an immobilized or dematerialized form for their transfer by book entry, ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities. Proposed Rule 17Ad–22(e)(11)(ii) would require a covered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to implement internal auditing and other controls to safeguard the rights of securities issuers and holders, prevent the unauthorized creation or deletion of securities, and conduct periodic and at least daily reconciliation of securities issues it maintains. Finally, proposed Rule 17Ad–22(e)(11)(iii) would require a covered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to protect assets against custody risk through appropriate rules and procedures consistent with relevant laws, rules, and regulations in jurisdictions where it operates.[385]

b. Comment Received and Commission Response

The Commission received one comment regarding proposed Rule 17Ad–22(e)(11). The commenter expressed concern that the language in proposed Rule 17Ad–22(e)(11)(i), which requires the policies and procedures of a covered clearing agency providing

[383] *See* CCA Standards proposing release, *supra* note 5, at 29539–40.

[384] *See* Rule 17Ad–22(e)(10), *infra* Part VI.

[385] *See* CCA Standards proposing release, *supra* note 5, at 29540–43.

CSD services to be reasonably designed to ensure the integrity of securities issues, differs materially from PFMI Principle 11 and FRB's Regulation HH, both of which require that an entity ''help'' ensure the integrity of securities issues.[386] The commenter also expressed the concern that no covered clearing agency is in a position to guarantee the integrity of the securities.[387] As a result, the commenter urged the Commission to include the words ''to help'' before ''ensure,'' to avoid any interpretation that clearing agencies providing CSD services are held to a materially higher standard than the commenter believes is the Commission's intention.[388] In the alternative, the commenter proposed the substitution of another phrase (*e.g.,* ''to promote'' or ''to protect'') that accurately characterized the cooperative nature of CSDs.[389]

In response to the comment received, the Commission notes that the rule text does not require a covered clearing agency to ensure or guarantee the integrity of securities issues; rather, Rule 17Ad–22(e)(11) requires policies and procedures reasonably designed to ensure the integrity of securities issues. The Commission believes that the policies and procedures nature of the rule mitigates the concern raised by the commenter because the rule requires a covered clearing agency to ensure that its policies and procedures are reasonably designed to ensure the integrity of securities issues and it does not require a covered clearing agency to ensure the integrity of securities issues. The Commission is not modifying proposed Rule 17Ad–22(e)(11) to add the words ''to help'' before ''ensure'' because, in the Commission's view, such an addition would inappropriately weaken the rule. Although the rule does not require a guarantee of the integrity of securities issues, the rule does require reasonably designed policies and procedures. Rule 17Ad–22(e)(11) recognizes that reasonably designed policies and procedures with respect to the integrity of securities issues is important for investor protection. In this regard, the Commission believes that such policies and procedures generally should be designed to prohibit overdrafts and debit balances in securities accounts, which can create unauthorized issuances of securities that undermine the integrity of the covered clearing agency's services.

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(11) as proposed.[390] Because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(11), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address CSD services:

- Whether it has appropriate rules, procedures, and controls, including robust accounting practices, to safeguard the rights of securities issuers and holders, to prevent the unauthorized creation or deletion of securities, and to conduct periodic and at least daily reconciliation of the securities it maintains;
- whether it prohibits overdrafts and debit balances in securities accounts;
- whether it maintains securities in an immobilized or dematerialized form for their transfer by book entry and, where appropriate, whether it provides incentives to immobilize or dematerialize securities;
- whether it protects assets against custody risk through appropriate rules and procedures consistent with its legal framework;
- whether it employs a robust system that ensures segregation between its own assets and the securities of its participants and segregation among the securities of participants; and
- whether it identifies, measures, monitors, and manages its risks from other activities that it may perform and whether additional tools may be necessary to address such risks.

In addition, the Commission notes that Rule 17Ad–22(e)(11)(i) is not intended to prohibit a covered clearing agency from continuing to hold physical certificates on behalf of its members where such securities currently exist in paper form or from providing other custody-only services.[391] The Commission's rules do not prohibit, and in some respects contemplate, the issuance of securities certificates. For example, Rule 17Ad–22(e)(11)(i) would not prohibit a covered clearing agency from holding American depositary shares in custody.[392]

The Commission also notes that the custody risk described in Rule 17Ad–22(e)(11)(iii) may be related to both physical delivery risk and operational risk, the latter including risks such as theft, loss, counterfeiting, and deterioration or damage to assets. To mitigate such risks, a covered clearing agency could consider obtaining insurance coverage to help ensure that (i) records of securities held in custody accurately reflect holdings, and (ii) employee duties for the recordkeeping and holding of securities are separate and discrete duties. The Commission notes that dematerialization of securities alone does not eliminate the applicability of any requirements to protect against custody risk and instead may create new sources of risk, such as hacking or digital piracy.

12. Rule 17Ad–22(e)(12): Exchange-of-Value Settlement Systems

As proposed, Rule 17Ad–22(e)(12) would require a covered clearing agency, for transactions that involve the settlement of two linked obligations, to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other, regardless of whether the covered clearing agency settles on a gross or net basis and when finality occurs.[393]

In response to a request for comment as to whether there are circumstances where it is not feasible or practicable, in an exchange-of-value settlement context, to ensure that the settlement of one obligation is final if and only if the settlement of the corresponding obligation is final, the Commission received one comment. The commenter stated that such a situation occurs when the settlement of a CDS contract occurs following a credit event.[394] In this case, the commenter stated that there may be some non-delivery versus payment obligations to be settled, such as loans, and that at least one CCP has policies and procedures to address this situation to secure settlement. The commenter expressed the belief that Rule 17Ad–

[386] *See* DTCC at 7 (emphasis in original).

[387] *See id.* at 7.

[388] *See id.* at 8.

[389] *See id.*

[390] *See* Rule 17Ad–22(e)(11), *infra* Part VI.

[391] For example, the Commission understands that, in the United States, CSD services currently include the provision of custody-only services, in addition to book-entry transfer and related services that may also include providing custody.

[392] An American depositary receipt (''ADR''), whether in a program sponsored or unsponsored by a foreign issuer, is the physical certificate that evidences American depositary shares, which represent an ownership interest in a specified number of securities of a foreign issuer that have been deposited with a depositary. *See* Securities Act Release No. 33–6894 (May 23, 1991) 56 FR 24420, 24421 n.5 (May 30, 1991). The shares of a foreign issuer that underlie an ADR are usually held by a custodian appointed by the depositary in the country of incorporation of the foreign issuer, may be in paper certificate form, and may be in the ultimate custody of the CSD.

[393] *See* CCA Standards proposing release, *supra* note 5, at 29543–44.

[394] *See* LCH at 4.

22(e)(12) should encompass this situation.[395]

In response, the Commission notes that the commenter has not described a linked obligation as contemplated under Rule 17Ad–22(e)(12), such as the delivery of securities against payment of either cash or securities in connection with the purchase or sale of a security, because the commenter has described a non-delivery versus payment obligation. The Commission therefore believes that the comment is not within the scope of the settlement mechanisms contemplated by Rule 17Ad–22(e)(12). While the Commission believes that a covered clearing agency generally should have policies and procedures to address ''free-of-payment'' deliveries or the settlement of non-delivery versus payment obligations if it accepts non-delivery versus payment obligations, Rule 17Ad–22(e)(12) addresses settlement mechanisms that eliminate principal risk by ensuring that the final settlement of one obligation occurs if and only if the final settlement of the linked obligation occurs.

The Commission also notes that Rule 17Ad–22(e)(8) requires a covered clearing agency to have policies and procedures to define the point at which settlement is final. Where a covered clearing agency's policies and procedures for ensuring settlement finality apply only when settlement of the corresponding obligation is final, the covered clearing agency may wish to consider corresponding policies and procedures that address legal, contractual, operational, and other risks.

The Commission is adopting Rule 17Ad–22(e)(12) as proposed.[396]

13. Rule 17Ad–22(e)(13): Participant-Default Rules and Procedures

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(13) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in the event of a participant default. Proposed Rule 17Ad–22(e)(13)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to address the allocation of credit losses it may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the covered clearing agency may borrow from liquidity providers. Proposed Rule 17Ad–22(e)(13)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to describe its process to replenish any financial resources it may use following a member default or other event in which use of such resources is contemplated. Finally, proposed Rule 17Ad–22(e)(13)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.[397]

b. Comments Received and Commission Response

i. Limitations on Replenishment of Resources

One commenter stated that the Commission's rule should explicitly require that replenishment of resources through compulsory means (such as assessments on clearing members) be subject to a well-defined cap.[398] The Commission is declining to modify Rule 17Ad–22(e)(13) to impose a ''cap'' on the replenishment of resources by a covered clearing agency. Consideration of whether a cap is appropriate depends on a number of factors related to the covered clearing agency's recovery plan as a whole and cannot be viewed in isolation, including, in particular, what measures a covered clearing agency could implement in the event that a covered clearing agency experienced losses that exceeded the ''cap.'' Given this uncertainty and that each covered clearing agency is structured and operated differently, and that collectively they clear different products with different risk profiles and employ different default management procedures, the Commission believes that a cap may not be appropriate in all circumstances and could potentially increase, rather than decrease, systemic risk because it may impede the covered clearing agency's ability to replenish resources to cover losses in the event of a participant default.[399]

As a general matter, the Commission also believes that the commenters' recommendation would be inconsistent with the principles-based approach set forth in Rule 17Ad–22(e).[400] The Commission believes that establishing prescriptive standards (such as a cap) that, on an absolute and ex ante basis, prohibit a covered clearing agency's use of particular tools for replenishment would make it more difficult for a covered clearing agency to maintain an appropriate balance between affording its participants predictability and certainty, and ensuring that the covered clearing agency can effectively manage risk. The Commission also notes that policies and procedures related to such caps or other alternative approaches to limitations on the replenishment of resources would be related to the development of a covered clearing agency's recovery and wind–down plans under Rule 17Ad–22(e)(3).[401] The Commission has previously stated in Part II.C.3.b.iii above that, given the nature of recovery planning—as here with caps—such plans are likely to closely reflect the unique characteristics of the covered clearing agency and will vary depending on the products cleared. The Commission believes that these mechanisms under Rule 17Ad–22(e) would help a covered clearing agency to appropriately consider, review, and address the need for a cap on replenishment, pursuant to its governance arrangements.

ii. Risks of Certain Loss Allocation and Limiting Participant Liability

Two commenters recommended models for loss allocation to non-defaulting customers of clearing members.[402] One of these commenters urged the Commission to provide clarification and guidance that Rule 17Ad–22(e)(13) would (i) ensure participant liability is limited, ascertainable, and manageable and (ii) require a covered clearing agency to adopt rules specifying and providing risk disclosure regarding so-called ''end of waterfall'' scenarios.[403] The commenter stated that guidance is necessary to ensure that Rule 17Ad–22(e)(13) complements the requirements

[395] *See id.* at 4–5.

[396] *See* Rule 17Ad–22(e)(12), *infra* Part VI.

[397] *See* CCA Standards proposing release, *supra* note 5, at 29544–46.

[398] *See* ISDA at 4.

[399] *See infra* Part III.B.3.a.viii (discussing the economic effects of Rule 17Ad–22(e)(13)).

[400] *See supra* Part II.B.

[401] *See supra* Part II.C.3.b.iii.

[402] *See* The Clearing House at 4; Vanguard at 6–7.

[403] *See* The Clearing House at 4. With respect to these comments, the Commission understands an ''end of waterfall'' scenario to be a scenario where a covered clearing agency suffers losses that, due to the default of one or more participants, exceed in the aggregate the loss-absorbing resources in the covered clearing agency's default risk management waterfall.

of Rule 17Ad–22(b)(1),[404] certain guidance in the Consultative Recovery Report,[405] and a number of risk management practices relevant for participants of covered clearing agencies.[406] In this regard, the commenter noted that participants are subject to single counterparty credit limits, certain accounting criteria for netting their positions cleared at a CCP, and regulatory capital requirements.[407] The commenter also noted that such guidance is necessary to ensure that a covered clearing agency does not become a transmission mechanism for systemic risk. As a general matter, the commenter expressed opposition to any CCP risk management practice that constitutes an unpredictable and uncontrollable loss allocation arrangement or a restriction on participant withdrawal. For this purpose, the commenter asked the Commission to adopt the following clarification and guidance that: (i) A covered clearing agency must address the consequences of circumstances in which the covered clearing agency's credit losses upon the default of one or more participants exceed the resources designated to absorb such losses; (ii) a covered clearing agency may not provide for (1) the forced allocation of a defaulted portfolio to a non-defaulting participant other than through a successfully completed auction process or otherwise with the participant's agreement, (2) invoicing to non-defaulting participants of losses on cleared positions in the portfolio(s) of one or more defaulting participants or (3) non-voluntary tear-ups of previously matched and cleared positions; and (iii) a covered clearing agency must clearly specify the process for, and effective time of, withdrawal from participant status such that a participant may withdraw upon the later of (1) the closeout or transfer of all its positions and (2) a reasonable prior notice period, without subjecting such withdrawal to a discretionary or subjective approval requirement or subjecting the withdrawing participant to liability for increased exposures after the effective time of withdrawal.[408] The remainder of the requested clarification and guidance would entail affording participants increased certainty regarding what exposures and obligations might arise where a CCP encounters an ''end of waterfall'' scenario. For this reason, the commenter also asked the Commission to clarify that a covered clearing agency may not redefine the economic terms of outstanding cleared contracts without a reasonable prior notice and transition period prior to effectiveness.[409]

The second commenter urged the Commission to prohibit the use of non-defaulting customer initial, variation and excess margin to aid in the recovery of a covered clearing agency in the event of financial stress, such as from credit losses, liquidity shortfalls, or other losses.[410] According to the commenter, in such a case losses would effectively be allocated to participants who have not contributed to the loss. The commenter contended that such exposure is not present in the OTC swaps market, where customer assets are protected in segregated custody accounts. The commenter also stated that participants have no means to assess and mitigate such risk, since they do not have transparency into the financial health and risk management practices of their fellow participants, security-based swap dealers, or the covered clearing agency itself. The commenter instead urged the Commission to consider the development of enhanced recordkeeping and reporting, enhanced oversight and compliance, enhanced risk management and mitigation, increased contributions by SBSDs and increased contributions to, and management of, the covered clearing agency guaranty fund.[411]

Much of the clarification and guidance sought by the commenters, in the Commission's view, would entail broad, ex ante prohibitions on a number of specific default management practices of CCPs, including the use of uncapped assessment authority, prohibitions on the use of non-defaulting customer initial, variation, and excess margin to aid in recovery, forced allocations of defaulted clearing portfolios, invoicing back of losses arising from a defaulting participant's positions, and partial non-voluntary tear-ups of previously matched and cleared positions. As discussed further above,[412] Rule 17Ad–22(e) does not prescribe a specific tool or arrangement to achieve its requirements. The Commission believes that when determining the content of its policies and procedures with respect to default management, each covered clearing agency must have the ability to enhance its policies and procedures to meet the evolving challenges and risks in the securities market that the covered clearing agency serves. Consistent with the goals sought by the commenters, the Commission has developed through the amendments to Rule 17Ad–22 and new Rule 17Ab2–2, an enhanced oversight and compliance framework that includes enhanced requirements for the policies and procedures of a covered clearing agency that govern financial risk management generally and, in particular, the risk management of guaranty or clearing funds. The Commission therefore is not adopting the changes sought by these commenters.

The Commission believes that each covered clearing agency generally should consider evaluating the strengths and weaknesses of respective tools so that the covered clearing agency can choose the set most appropriate for each relevant recovery scenario, including the sequence in which they should be used. As previously noted in Part II.C.13.b.i, ensuring that a covered clearing agency does not become a transmission mechanism for systemic risk means, in part, striking an appropriate balance between affording its participants predictability and certainty, on the one hand, and ensuring that the covered clearing agency can effectively manage risk so that it can effectively continue its risk mitigating function within the broader financial system, on the other. As a general matter, the Commission believes that striking such a balance can be difficult using broadly prescriptive standards that, on an absolute and ex ante basis, prohibit a covered clearing agency's application of certain risk management tools. Furthermore, particular requirements under Rule 17Ad–22(e) should not be viewed in isolation but instead should be considered holistically and in light of other requirements under the Exchange Act and the Clearing Supervision Act.

The Commission believes that policies and procedures for participant default generally should be established,

[404] *See* 17 CFR 240.17Ad–22(b)(1). Rule 17Ad–22(b)(1) states that a clearing agency that performs CCP services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.

[405] *See supra* note 126.

[406] *See* The Clearing House at 4.

[407] *See* The Clearing House at 5.

[408] *See id.* at 6. The commenter has also sought clarification and guidance regarding emergency authority or decision-making at covered clearing agencies and disclosures regarding such decision-making and participant-default rules and procedures. *See* The Clearing House at 6–7. These comments have been addressed separately in Parts II.C.2.b and II.C.23.b.

[409] *See id.* at 7.

[410] *See* Vanguard at 6–7.

[411] *See id.* at 7.

[412] *See supra* Part II.B.

maintained, and enforced pursuant to the covered clearing agency's governance process, which must be consistent with the requirements of Section 17A of the Exchange Act, Section 19 of the Exchange Act, and the rules and regulations thereunder, including Rule 19b–4. The individual topics raised by the commenters would have implications for the development of a covered clearing agency's recovery and wind–down plans; however, as noted in Part II.C.3.b.iii above in connection with the Commission's prior discussion of recovery and wind–down plans, the impact of such recovery tools the covered clearing agency's recovery and wind–down plan can only be considered in the context of the plan as a whole and not in isolation. The organizational and governance structures of covered clearing agencies vary, as do the composition of their members and the products they clear, and each is relevant to consideration of potential loss allocation mechanisms.

iii. Stakeholder Participation in Periodic Testing

One commenter expressed concern that the requirement in proposed Rule 17Ad–22(e)(13)(iii) for policies and procedures to require participants and, where practicable, other stakeholders in the covered clearing agency to participate in periodic testing and review of its default procedures may be read to require a covered clearing agency to mandate the participation of all its participants in such tests.[413] The commenter expressed concern that such a requirement would not be realistically achievable, of sufficient benefit to outweigh the time and costs, or appropriate given the sensitive nature of information involved in such tests. The commenter expressed the belief that covered clearing agencies can accomplish the objective of proposed Rule 17Ad–22(e)(13)(iii) by methods other than mandating participation in annual closeout tests and requested discretion and flexibility to achieve such objective.[414]

First, the Commission notes that the commenter provided no estimate of the time or costs of testing.[415] More generally, the Commission notes that the testing requirements in proposed Rule 17Ad–22(e)(13)(iii) are similar to requirements for members or participants to participant in business continuity and disaster recovery plans testing under Regulation SCI, and therefore registered clearing agencies are already subject to requirements for members to participate in such testing and have had to consider how to treat sensitive material in such testing. As with Rule 1004 of Regulation SCI, the Commission continues to believe that participation rates by members and participants in voluntary industry-led testing has generally been low, and that mandatory participation is the best means to achieve effective and coordinated testing with assured participation by the more significant members and participants.[416] The Commission notes, however, that proposed Rule 17Ad–22(e)(13)(iii) does not specify that all participants in the clearing agency participate in every periodic test and review of its default procedures. A covered clearing agency may designate in its policies and procedures that certain participants, or certain categories of participants, be designated for participation in certain tests.

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(13) with one modification.[417] As previously noted,[418] the Commission is moving the requirements in proposed Rules 17Ad–22(e)(13)(i) and (ii) to Rules 17Ad–22(e)(4)(viii) and (ix), respectively, to consolidate requirements for management of a covered clearing agency's default waterfall within a single rule. The Commission believes this modification improves consistency between Rules 17Ad–22(e)(4) and (7). Specifically, Rule 17Ad–22(e)(4) includes requirements intended to facilitate the management of credit risk, and proposed Rules 17Ad–22(e)(13)(i) and (ii) include requirements to address the allocation of credit losses and the replenishment of funds. Similarly, Rule 17Ad–22(e)(7) includes requirements intended to facilitate the management of liquidity risk, and Rules 17Ad–22(e)(7)(viii) and (ix) include requirements to address liquidity shortfalls and replenish liquid resources. In contrast, Rule 17Ad–22(e)(13) requires a covered clearing agency to have policies and procedures addressing its authority and operational capacity to take timely action to contain losses and liquidity demands, and proposed Rule 17Ad–22(e)(13)(iii) included requirements for the testing of default procedures. Accordingly, the rules have been reorganized.

Further, because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(13), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address participant-default rules and procedures:

- Whether it has default rules and procedures that enable it to continue to meet its obligations in the event of a participant default and that address the replenishment of resources following a default;
- whether it is well prepared to implement its default rules and procedures, including any appropriate discretionary procedures provided for in its rules;
- whether it publicly discloses key aspects of its default rules and procedures;
- whether it involves its participants and other stakeholders in the testing and review of its default procedures, including any close-out procedures; and
- whether such testing and review is conducted at least annually or following material changes to the rules and procedures to ensure that the testing and review are practical and effective.

In addition, a covered clearing agency that has financial and operational triggers for default generally should clearly define these triggers.[419] Where triggers are not automatic through the application of objective standards or thresholds, the Commission believes the discretion afforded a covered clearing agency to declare defaults should be clearly defined. For example, a clear definition may include defining which person or group exercises discretionary authority in the event of default and providing specific examples of when the exercise of discretion is appropriate.

With respect to policies and procedures related to managing a participant default, the Commission believes that such policies and procedures generally should address, among other things (i) accessing credit facilities, (ii) managing (which may include hedging open positions and

[413] *See* DTCC at 8–9.

[414] *See id.*

[415] *See supra* Part III.B.3.a.viii (discussing the economic effect of Rule 17Ad–22(e)(13)(iii)).

[416] *See* Regulation SCI adopting release, *supra* note 30, at 72349.

[417] *See* Rule 17Ad–22(e)(13), *infra* Part VI.

[418] *See supra* Part II.C.4.c.

[419] *See* Clearing Agency Standards, *supra* note 5, at 29544. An operational default may occur when a participant is not able to meet its obligations due to an operational problem, such as a failure in information technology systems. Rule 17Ad–22(e)(17) includes requirements related to operational risk management. *See infra* Part II.C.17. In addition, the Commission has also adopted Regulation SCI, which establishes requirements for SROs, among other entities, with respect to operational risk management. *See supra* note 30 and accompanying text.

funding collateral positions it is not prudent to close out immediately), transferring (such as through allocation or auction to other members) and/or closing out a defaulting member's positions; and (iii) transferring and/or liquidating applicable collateral. Based on its supervisory experience, the Commission believes that default procedures would generally set forth (i) the action that may be taken (*e.g.,* exercising mutualization of losses); (ii) who may take those actions (*e.g.,* the division of responsibilities when clearing agencies operate links to other clearing agencies); (iii) the scope of the actions that may be taken (*e.g.,* any limits on the total losses that would be mutualized); (iv) potential changes to the normal settlement practices, should these changes be necessary in extreme circumstances, to ensure timely settlement; (v) the management of transactions at different stages of processing; (vi) the sequencing of actions; (vii) the roles, obligations, and responsibilities of the various parties, including non-defaulting members; (viii) the mechanisms to address a covered clearing agency's obligations to non-defaulting members (*e.g.,* the process for clearing trades guaranteed by the covered clearing agency to which a defaulting member is a party); and (ix) the mechanisms to address the defaulting member's obligations to its customers (*e.g.,* the process for dealing with a defaulting member's accounts).

With respect to the operational capacity necessary to comply with requirements to contain losses, the Commission believes that the following measures could help promote operational capacity: (i) Establishing training programs for employees involved in default matters to ensure policies are well implemented; (ii) developing a communications strategy for communicating with stakeholders, including the Commission, concerning defaults; and (iii) making sure the proper tools and resources (whether these are personnel or other) required are available to close out, transfer, or hedge open positions of a defaulting member promptly even in the face of rapid market movements.

With respect to the policies and procedures for testing and review of default procedures, including any close-out procedures, a covered clearing agency generally should perform the testing and review not less than once every twelve months. In addition, a covered clearing agency generally should make efforts to secure the participation of all stakeholders in testing and review of default procedures, but the Commission recognizes that a covered clearing agency may have limited ability to require said participation by all such stakeholders in all circumstances.

14. Rule 17Ad–22(e)(14): Segregation and Portability

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(14) would apply only to a covered clearing agency that is either a security-based swap clearing agency or a complex risk profile clearing agency. Rule 17Ad–22(e)(14) would require such a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a member's customers and the collateral provided to the covered clearing agency with respect to those positions, and effectively protect such positions and related collateral from the default or insolvency of that member.[420]

b. Comments Received and Commission Response

The Commission received multiple comments on Rule 17Ad–22(e)(14) and, more generally, the Commission's regime for segregation and portability in the U.S. securities markets. While some commenters supported the Commission's proposed principles-based approach, a number of commenters expressed a preference for an approach that would prescribe, and in some instances mandate, a specific segregation and portability framework. In addition, two commenters sought clarification on certain aspects of the proposal relating to portability and protection of customer assets held at a common covered clearing agency participant. The Commission discusses these three groups of comments in turn below.

One commenter strongly supported efforts to improve the protection of customer positions and collateral.[421] Another commenter also expressed general support for the Commission's objective of protecting customer collateral posted in connection with clearing security-based swaps, and stated that the implementation of a regulatory structure that provided for appropriate protection of collateral would reduce systemic risk by bolstering confidence that losses related to counterparty risk would be manageable.[422]

Several commenters, however, urged the Commission to modify the proposed rule's approach to the treatment of customer positions, particularly with respect to security-based swaps. Three commenters noted the importance of coordinating efforts with other regulators to ensure that the Commission's rules are consistent with other regulatory regimes.[423] Two commenters expressed related concerns that the proposal could result in significantly weaker protections for security-based swaps than exist in the OTC market or in the rules for cleared swaps adopted by the CFTC.[424] Of these, one commenter opposed the Commission's approach of providing covered clearing agencies with discretion to adopt policies and procedures regarding holding of margin for security-based swaps.[425] The commenter stated that the Commission should instead adopt a mandatory threshold level of protection for customer margin for security-based swaps that is consistent with the protections afforded to swaps and that is appropriate to the breadth and depth of the security-based swap market.[426] Moreover, the same commenter, along with two other commenters, recommended that the Commission explicitly adopt the LSOC model as a framework for the segregation and portability of customer positions,[427] and two of the three commenters also urged that the Commission's LSOC regime be mandatory and uniform.[428]

In addition, one commenter that urged the Commission to adopt a specific LSOC mandate also expressed several other related comments. The commenter expressed the need for covered clearing agencies to provide individual segregation as an option for customers.[429] The commenter also recommended that both initial and variation margin be passed on to the covered clearing agency, with all excess margin held in a segregated account (the ''LSOC with excess'' model).[430] The commenter further expressed the belief that security-based swap dealers and broker-dealers should not be authorized to rehypothecate or use customer margin or excess margin in its

[420] *See* CCA Standards proposing release, *supra* note 5, at 29546–47.

[421] *See* OCC at 12.

[422] *See* Fidelity at 1.

[423] *See id.* at 4–5 (noting CFTC requirements); LCH at 5 (noting both CFTC requirements and requirements under EMIR); Vanguard at 2 (noting CFTC requirements).

[424] *See* Fidelity at 1–4; Vanguard at 2.

[425] *See* Vanguard at 4.

[426] *See id.* (referencing the objectives and principles for the risk management standards prescribed under 12 U.S.C. 5464(b)); *see also supra* note 18.

[427] *See* Fidelity at 1–4; ICI at 4, 6; Vanguard at 2.

[428] *See* ICI at 4; Fidelity at 3–4.

[429] *See* ICI at 12–13.

[430] *See id.* at 4–5.

business.[431] Finally, in conjunction with another commenter, this commenter also submitted a second comment letter noting that, to implement LSOC for security-based swap positions, the Commission would need to undertake several initiatives in addition to revising Rule 17Ad–22(e)(14), including amending rules under SIPA, revising proposed Rule 18a–4 under the Exchange Act, amending Rule 15c3–3 under the Exchange Act, and permanently extending the relief provided in the Portfolio Margining order.[432]

After careful consideration, the Commission declines to modify Rule 17Ad–22(e)(14) to explicitly prescribe or mandate the segregation and portability frameworks described immediately above. The Commission notes that Rule 17Ad–22(e)(14) provides covered clearing agencies with flexibility, subject to their obligations and responsibilities as SROs under the Exchange Act, to determine policies and procedures with respect to the means of segregation and portability consistent with the rule. Furthermore, in contrast with the views expressed by the commenters above, the Commission believes that Rule 17Ad–22(e)(14) already requires a mandatory threshold level of protection for customer margin for security-based swaps similar to the threshold level of protection for swaps because it requires policies and procedures reasonably designed to both (i) enable the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions, and (ii) protect such positions and related collateral from the default or insolvency of that participant.

The Commission believes that prescribing the particular frameworks identified by the commenters would be inconsistent with the Commission's principles-based approach to Rule 17Ad–22(e).[433] Although a tool or method like LSOC might be appropriate for a covered clearing agency operating in certain domestic markets to meet the requirements of Rule 17Ad–22(e)(14), in other markets other tools or methods, such as an individual segregation method, may also provide the threshold level of protection sought by the commenters while being consistent with the rule. Moreover, in contrast to the markets for cash and listed options in the United States, where the structure for segregation and portability is primarily maintained at the broker-dealer level,[434] in the market for security-based swaps the segregation and portability structure resides in CCPs, and those entities have taken different approaches reflective of the needs of their different structures, members, markets served, and products cleared. For example, the Commission notes that one commenter understood Rule 17Ad–22(e)(14) to permit a covered clearing agency to employ either an LSOC model, consistent with the requirements set forth by the CFTC, or an individual segregation model, consistent with EMIR.[435] Accordingly, the Commission does not believe, as requested by the commenters, that the Commission should mandate LSOC on a uniform basis across security-based swap and complex risk profile clearing agencies.

Notwithstanding its decision not to adopt an approach that prescribes or mandates a specific portability and segregation framework, the Commission notes that it has been mindful of the existing structures for segregation and portability for security-based swaps in the United States, and has granted relief intended to allow investors to participate in the market for security-based swaps. Notably, the Commission has issued an order granting conditional exemptive relief from compliance with certain provisions of the Exchange Act in connection with a program to commingle and portfolio margin customer positions in cleared credit default swaps, which include both swaps and security-based swaps, in a segregated account established and maintained in accordance with Section 4d(f) of the Commodity Exchange Act.[436] In this regard, the Commission observes that the individual segregation method is one tool that provides a

[431] *See id.* at 5. Because the commenter's recommendation would govern the activities of security-based swap dealers and broker-dealers, the Commission notes that it is beyond the scope of Rule 17Ad–22.

[432] *See* AMG–ICI at 8–12. The commenter also noted that the adoption of a sound and workable segregation regime is essential to ensure that counterparties are protected in bankruptcy. *See* ICI at 11–12. The Commission agrees that the development of a covered clearing agency's segregation and portability regime should consider the operational and bankruptcy implications of such a regime. The Commission also notes that the tools available to a covered clearing agency considering such implications will necessarily depend on the legal regime applicable to the covered clearing agency. The commenter recommended that the Commission articulate in a proposal the operational and bankruptcy implications of such a structure to provide market participants the opportunity to comment on these issues. *See id.* at 4. The Commission believes, however, that the operational and bankruptcy implications will depend on the particular tools that a covered clearing agency employs in its segregation and portability regime and also on the legal regimes within which the covered clearing agency operates. Because the Commission is taking a principles-based approach in Rule 17Ad–22(e), the Commission is not making such a proposal under Rule 17Ad–22(e).

[433] *See supra* Part II.A.4.

[434] Exchange Act Rule 15c3–3 requires broker-dealers that maintain custody of customer securities and cash (a ''carrying broker-dealer'') to take two primary steps to safeguard these assets. The steps are designed to protect customers by segregating their securities and cash from the broker-dealer's proprietary business activities. If the broker-dealer fails financially, the securities and cash should be readily available to be returned to customers. In addition, if the failed broker-dealer is liquidated in a formal proceeding under the Securities Investor Protection Act of 1970, the securities and cash would be isolated and readily identifiable as ''customer property'' and, consequently, available to be distributed to customers ahead of other creditors.

The first step required by Rule 15c3–3 is that a carrying broker must maintain physical possession or control of all fully paid and excess margin securities of their customers. *See* 17 CFR 240.15c3–3. Physical possession or control means the broker-dealer must hold these securities in one of several locations specified in Rule 15c3–3 and free of liens or any other interest that could be exercised by a third party to secure an obligation of the broker-dealer. Permissible locations include a bank, as defined in section 3(a)(6) of the Exchange Act, and a clearing agency. As described herein, holding jumbo/global positions in the record name and custody of a clearing agency is a fundamental part of current U.S. market structure in which many holders hold indirectly through ''street name.''

The second step is that a carrying broker-dealer must maintain a reserve of cash or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers, including cash obtained from the use of customer securities. The account must be titled ''Special Reserve Bank Account for the Exclusive Benefit of Customers.'' The amount of net cash owed to customers is computed pursuant to a formula set forth in Exhibit A to Rule 15c3–3. Under the customer reserve formula, the broker-dealer adds up customer credit items (*e.g.,* cash in customer securities accounts and cash obtained through the use of customer margin securities) and then subtracts from that amount customer debit items (*e.g.,* margin loans). If credit items exceed debit items, the net amount must be on deposit in the customer reserve account in the form of cash and/or qualified securities. A broker-dealer cannot make a withdrawal from the customer reserve account until the next computation and then only if the computation shows that the reserve requirement has decreased. The broker-dealer must make a deposit into the customer reserve account if the computation shows an increase in the reserve requirement. *See* 17 CFR 240.15c3–3.

In addition, records of customer positions are subject to broker-dealer recordkeeping rules. Exchange Act Rules 17a–3 and 17a–4 require records be kept for certain periods of time, such as three or six year periods depending upon the type of record. *See* 17 CFR 240.17a–3, 17a–4.

See also 15 U.S.C. 78c–5 (providing for segregation with respect to security-based swaps); Exchange Act Release No. 34–68071 (Oct. 18, 2012), 77 FR 70213, (Nov. 23, 2012) (proposing Rule 18a–4 under the Exchange Act for segregation with respect to security-based swaps). The Commission has also granted conditional relief under Sections 3E(b), (d), and (e) of the Exchange Act to, among others, clearing entities dually registered with the Commission and the CFTC as registered clearing agencies and DCOs, respectively. *See* Exchange Act Release No. 34–68433 (Dec. 14, 2012), 77 FR 75211 (Dec. 19, 2012).

[435] *See* LCH at 5.

[436] *See* Exchange Act Release No. 34–68433 (Dec. 14, 2012), 77 FR 75211 (Dec. 19, 2012) (''Portfolio Margining order'').

threshold level of protection to customers and may be a tool that a covered clearing agency determines to employ consistent with the requirements of Rule 17Ad–22(e)(14). The Commission also observes that under the ''LSOC with excess'' model, customer margin is segregated from clearing member margin, and therefore that framework, like LSOC and individual segregation as previously described, is also a tool that may also be relevant to a covered clearing agency's consideration of how to implement a framework consistent with the requirements of Rule 17Ad–22(e)(14).

In addition, the Commission received two comments that asked the Commission to clarify certain aspects of Rule 17Ad–22(e)(14). One commenter noted that there could be tension between the competing goals of (i) customer portability and (ii) the need for a covered clearing agency to ensure the safety and soundness of itself and the markets.[437] The commenter urged the Commission to recognize the need for a covered clearing agency to balance these competing priorities and to avoid any interpretation of proposed Rule 17Ad–22(e)(14) that prohibits a covered clearing agency from liquidating positions, including customer positions, where liquidation is reasonably necessary for the protection of the covered clearing agency.[438] In response, the Commission believes that efforts to enable portability at security-based swap clearing agencies should be encouraged, but the Commission also recognizes that non-defaulting clearing members should not be required to take on customer positions to avoid putting the non-defaulting clearing member at risk, exceeding the member's ability to risk manage the customer's portfolio, or existing or creating inconsistencies with the member's risk profile. If a customer's positions cannot be ported, they will instead be liquidated. Therefore, the Commission does not believe the comment is inconsistent with either current practice or Rule 17Ad–22(e)(14), which does not prohibit the liquidation of customer positions in the event porting would be impracticable, contrary to the customer's preferences, or pose increased risk to the markets or non-defaulting members.

A second commenter stated that the proposed rule is silent on the issue of protections from fellow-customer risk (*i.e.,* protecting the positions and related collateral of a participant's customers from losses associated with the positions of other customers of that participant), and that Section 3E(e) of the Exchange Act prohibits clearing agencies from using deposited property as belonging to any person other than the swaps customer of the depositing broker, dealer, or security-based swap dealer.[439] The commenter recommended that the Commission make explicit that a covered clearing agency's policies and procedures must give effect to Section 3E(e) and that the covered clearing agency should publicly disclose the manner in which its procedures do so.[440] In response, the Commission notes that Section 3E(e) of the Exchange Act already prohibits such activity and, therefore any proposed rule change under Rule 19b–4 would need to be consistent with Section 3E(e).

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(14) as proposed. The Commission is applying Rule 17Ad–22(e)(14) only to security-based swap clearing agencies and complex risk profile clearing agencies because existing rules for the cash securities and listed options markets applicable to broker-dealers already promote segregation and portability to protect customer positions and funds in those markets. In proposing Rule 17Ad–22(e)(14), the Commission noted that it intended to avoid requiring changes to the existing structure of cash securities and listed options markets in the United States where registered clearing agencies that provide CCP or CSD services play a central role.[441] This approach is consistent with the PFMI.

Transactions in the U.S. cash security and listed options markets are characterized by the following features: (i) Customers of members generally do not have an account at a clearing agency; [442] (ii) the clearing agency is not able to identify which participants' customers beneficially own the street name positions registered in the record name of the clearing agency (or its nominee); and (iii) the clearing agency has no recourse to funds of customers of members. Therefore, neither portability nor segregation occur as a practical matter at the CCP level under the current market structure for cash securities and listed options.[443] Further, customer positions and funds in the cash securities and listed options markets are protected under the Securities Investor Protection Act of 1970 (''SIPA'').[444]

With respect to portability, the Commission notes the portability requirement in Rule 17Ad–22(e)(14) would not apply only upon a member default; instead, a covered clearing agency to which Rule 17Ad–22(e)(14) applies generally should have policies and procedures that facilitate porting in the normal course of business, such as when a customer ends its relationship with a member to start a new relationship with a different member, or as a result of other events, such as a merger involving the member. Under Rule 17Ad–22(e)(14), a security-based swap clearing agency or complex risk profile clearing agency generally should structure its portability arrangements in a way that makes it highly likely that the positions and collateral of a defaulting member's customers could be effectively transferred to one or more other members.

Consistent with its response to the commenters discussed above, the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(14). Therefore, the Commission is providing the following guidance that a covered clearing agency subject to Rule 17Ad–22(e)(14) generally should consider in establishing and maintaining policies and procedures for segregation and portability:

- Whether it has, at a minimum, segregation and portability arrangements that effectively protect a participant's customers' positions and related collateral from the default or insolvency of that participant;
- if it additionally offers protection of such customer positions and collateral against the concurrent default of the participant and a fellow customer, whether it takes steps to ensure that such protection is effective;

[437] *See* OCC at 12.

[438] *See id.*

[439] *See* ISDA at 5.

[440] *See id.* at 5–6.

[441] *See* CCA Standards proposing release, *supra* note 5, at 29546.

[442] A customer of a member also would not have an account at the clearing agency where holding in record name (rather than through street name ownership). This is the case even where such record name owner-customer does not receive a paper security certificate but holds in book-entry form through the direct registration system, as direct registration system accounts are maintained by a transfer agent and not by the clearing agency. *See* Exchange Act Release No. 34–63320 (Nov. 16, 2010), 75 FR 71473, 71474 (Nov. 23, 2010) (discussing the ability of registered owners to hold their assets on the records of transfer agents in book-entry form through the direct registration system).

[443] *See* CCA Standards proposing release, *supra* note 5, at 29546.

[444] *See* 15 U.S.C. 78eee *et seq.* Pursuant to SIPA, when a broker-dealer that is a member of the Securities Investor Protection Corporation (''SIPC'') fails and customer assets are missing, SIPC seeks to return customer cash and securities, and supplements the distribution of the remaining customer assets at the broker-dealer with SIPC reserve funds of up to $500,000 per customer, including a maximum of $250,000 for cash claims.

- whether it employs an account structure that enables it readily to identify positions of a participant's customers and to segregate related collateral, and whether it maintains customer positions and collateral in individual customer accounts or in omnibus customer accounts;
- whether it structures its portability arrangements in a way that makes it highly likely that the positions and collateral of a defaulting participant's customers will be transferred to one or more other participants;
- whether it discloses its rules, policies, and procedures relating to the segregation and portability of a participant's customers' positions and related collateral, and, in particular, whether it discloses whether customer collateral is protected on an individual or omnibus basis; and
- whether it discloses any constraints, such as legal or operational constraints, that may impair its ability to segregate or port a participant's customers' positions and related collateral.

15. Rule 17Ad–22(e)(15): General Business Risk

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(15) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize.[445] Proposed Rule 17Ad–22(e)(15)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken. Proposed Rule 17Ad–22(e)(15)(ii) would require a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for holding liquid net assets funded by equity equal to the greater of either six months of its current operating expenses or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under proposed Rule 17Ad–22(e)(3)(ii). Additionally, proposed Rule 17Ad–22(e)(15)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for monitoring its business operations and reducing the likelihood of losses.[446] Finally, proposed Rule 17Ad–22(e)(15)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for maintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required by the proposed rule as discussed above.[447]

b. Comments Received

Most commenters expressed general support for the Rule 17Ad–22(e)(15), but a number of commenters also raised specific areas of concern and encouraged the Commission to adopt specific, and in some cases prescriptive, requirements under the rule. The Commission addresses each of these comments in turn below.

i. General Comments

One commenter expressed support for the proposed requirements for clearing agencies to identify and monitor general business risk, manage liquid assets, and maintain a viable plan for raising additional equity when needed.[448] The commenter believed that such requirements contribute to avoiding disruptions in the operations of clearing agencies, as well as the broader market. The commenter also expressed support for the proposed rule's requirements to identify, monitor and manage general business risk and to hold sufficient liquid assets in a manner allowing for a recovery or orderly wind-down if necessary.[449] A second commenter expressed support for the proposed requirement that covered clearing agencies hold sufficient capital to cover potential general business and operational losses and to enable continuation of business operations and noted a belief that six months of operating expenses is an appropriate base level of funding.[450] A third commenter generally endorsed the Commission's proposal to require a covered clearing agency to maintain liquid net assets sufficient to allow the covered clearing agency to continue to operate for no less than six months.[451] A fourth commenter also generally supported the Commission's proposal.[452] Finally, one commenter requested that the Commission phase-in implementation of Rule 17Ad–22(e)(15),[453] and that comment is addressed in Part II.G above.

ii. Application to Derivatives Clearing

One commenter expressed concern that the proposed requirement would be inadequate to address the potential for general business losses incurred by a covered clearing agency that clears large quantities of bespoke swap and derivative instruments, and therefore the commenter urged the Commission to reassess whether clearing of bespoke instruments is appropriate in light of the potential problems in predicting the performance of such instruments during times of stress.[454] The Commission notes that the purpose of proposing Rule 17Ad–22(e) was not to reassess whether the clearing of bespoke instruments is appropriate, but to focus on the regulatory framework for the regulation of covered clearing agencies and address, among other things, governance and financial risk management. Therefore, the Commission believes that the comment is beyond the scope of this rulemaking.

iii. Liquid Net Assets

The Commission received multiple comments related to the liquid net assets required under Rule 17Ad–22(e)(15)(ii). One commenter stated that, in addition to pre-funded capital and guaranty funds, it should be clear, in advance, that clearing members (and not the FRB or taxpayers) stand behind the organization should it run into financial trouble.[455] The Commission believes that Rule 17Ad–22(e), taken as a whole, already contemplates and addresses the commenter's concern. As previously noted, the rule requires policies and procedures reasonably designed to promote in a comprehensive way the resiliency of a covered clearing agency and, in particular, its ability to

[445] *See* CCA Standards proposing release, *supra* note 5, at 29547–48.

[446] *See id.* at 29548–49.

[447] *See id.* at 29549.

[448] *See* CFA Institute at 1–2.

[449] *See id.* at 10.

[450] *See* DTCC at 9.

[451] *See* OCC at 13.

[452] *See* CFA Institute at 10.

[453] *See* OCC at 15 (noting that it would be in a position to comply with such requirement by no later than January 1, 2015).

[454] *See* CFA Institute at 10.

[455] *See* SRC at 2; *see also supra* note 284 and accompanying text.

withstand periods of market stress.[456] The Commission notes as a general matter that the liquid net assets described in the rule should not be confused with the accounting term ''net liquid assets.'' For purposes of Rule 17Ad–22(e)(15)(ii), a covered clearing agency generally should consider liquid net assets to mean cash or highly liquid securities. When liquid net assets are funded by equity, a covered clearing agency generally should consider equity to mean common stock, disclosed reserves, and other related earnings. In addition, the Commission notes that Rule 17Ad–22(e)(3)(ii) separately requires policies and procedures for plans for recovery or orderly wind-down.

Two commenters urged the Commission not to take too narrow a view of what sources of funding would be considered liquid net assets funded by equity under the proposed rule.[457] The first commenter believed that in calculating its six-month liquid asset coverage, a CCP should be allowed to include projected revenues of the CCP over the same six-month period, subject to an appropriate haircut.[458] The commenter also requested that the Commission clarify that a buffer, such as a contingent capital arrangement requiring clearing members to contribute funds, should be considered an appropriate source of equity funding under the rule.[459] On these two issues, the Commission believes that the commenter has identified policies and procedures that would not satisfy Rule 17Ad–22(e)(15). Among other things, Rule 17Ad–22(e)(15)(ii) requires policies and procedures for holding liquid net assets funded by equity. If a covered clearing agency is relying on projected revenues or on obtaining liquid net assets through contingent arrangements, then the covered clearing agency is not holding liquid net assets funded by equity. The focus of Rule 17Ad–22(e)(15)(ii) is mitigating the risk that a covered clearing agency would be unable to perform its obligations as a going concern; to minimize such performance risk, the covered clearing agency must necessarily have assets that are readily available, such as cash reserves or cash equivalents. Projected revenues, like contingent funding mechanisms, do not provide certainty that a covered clearing agency can continue to perform its obligations when general business losses arise because the assets may be unavailable to satisfy business losses.

The same commenter and a second commenter also urged the Commission to clarify and broadly construe what constitutes equity capital to include noncumulative perpetual preferred stock, which would be permanently available.[460] One of these commenters noted that such preferred stock constitutes additional tier 1 capital under the BCBS capital framework and expressed the belief that the elements of capital that constitute tier 1 capital should be permitted to count as equity under the proposed rule.[461] In response, the Commission believes that the question of whether a particular noncumulative preferred stock would constitute equity capital would depend on the terms and conditions of each instrument and therefore such instruments would need to be assessed on a case-by-case basis. The Commission therefore declines to adopt the position urged by the commenter.

The same commenter further expressed an expectation that liquid net assets funded by equity would be calculated by comparing the clearing agency's shareholders equity to proprietary cash and liquid marketable securities and deducting unaffiliated third-party debt.[462] The commenter believed that it is appropriate for a covered clearing agency, where it has significant shareholder equity, to be able to liquefy that equity via intercompany funding so long as the requisite amount of cash and/or liquid securities is held and maintained at the covered clearing agency level. The commenter also emphasized the role that holding company structures play in funding their affiliates, noting that the holding company may have broader access to financial markets to liquefy the equity base of their subsidiaries.[463] The commenter argued that such financing would provide a high level of flexibility to meet a covered clearing agency's needs. In response to the commenter, the Commission is unable to opine on these particular calculations of the commenter's liquid net assets because the determination of whether a particular liquid net asset calculation meets the requirements of Rule 17Ad–22(e)(15)(ii) would need to be made on a detailed, case-by-case basis. The Commission would need to understand and evaluate, for example, the covered clearing agency's particular capital structure, the types of securities being held, the nature and extent of the covered clearing agency's debt holdings, the structure and elements of the intercompany funding arrangement described by the commenter, and the nature of the access that the holding company has to the relevant markets for the purposes of liquefying any subsidiary equity and how that access differs from that of the covered clearing agency.

In response to the commenter's position regarding the role that a holding company structure may play in addressing the requirement of Rule 17Ad–22(e)(15), the Commission reiterates prior statements made above that the requirements of Rule 17Ad–22(e) apply to each covered clearing agency registered with the Commission. Therefore, for example, if a covered clearing agency's parent or holding company were to adopt a company-wide framework addressing the issues covered in Rule 17Ad–22(e)(15), the covered clearing agency nevertheless would itself need to adopt or ratify those policies and procedures with respect to its own business to meet the requirements of Rule 17Ad–22(e)(15).[464] As adopted, pursuant to Rule 17Ad–22(e)(15)(ii) each covered clearing agency is required to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for holding liquid net assets funded by equity equal to the greater of either six months of its current operating expenses or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency.

iv. Viable Plan To Raise Additional Equity

With respect to the requirement for a covered clearing agency's policies and procedures to be reasonably designed to have a viable plan, updated annually, for raising additional equity when the covered clearing agency's equity falls below or close to the amount required by the proposed rule, one commenter believed that the proposed rule should require capital-raising to occur prior to a covered clearing agency approaching the required equity threshold.[465] Otherwise, the commenter stated, the covered clearing agency may be unable to raise the needed equity due to market conditions.[466] In response, the

[456] *See supra* notes 284–288 and accompanying text (discussing similar position from commenter regarding Rule 27Ad–22(e)(5)).

[457] *See* DTCC at 10; OCC at 13.

[458] *See* OCC at 14.

[459] *See id.*

[460] *See* DTCC at 10; OCC at 14.

[461] *See* DTCC at 10–11.

[462] *See id.* at 10.

[463] *See id.*

[464] *See supra* Part II.C.3.c.

[465] *See* CFA Institute at 10.

[466] *See id.*

Commission notes that Rule 17Ad–22(e)(15)(iii), as proposed, addresses the commenter's concern by requiring that the plan be viable when the covered clearing agency's equity falls below or close to the amount required by the proposed rule. However, the Commission is providing further guidance below to clarify its position further.

Another commenter expressed the belief that an annual review of the plan for raising additional equity is unnecessary and that a biannual review is sufficient, provided that the plan is reviewed sooner should changes occur.[467] The Commission continues to believe, however, that an annual review is an appropriate interval to help ensure that each covered clearing agency is mindful of changing market conditions. The Commission believes that, in a two-year window between biannual reviews, so much time passes that a covered clearing agency may find that market conditions have changed so significantly that a once-viable plan to raise additional equity is no longer viable. A yearly review cycle helps ensure that the covered clearing agency remains aware of changing market conditions, facilitating on an annual basis incremental updates to the plan in response to said changing market conditions. Further, the Commission believes that a covered clearing agency could adopt policies and procedures that provide for more frequent review in response to changing market conditions, and that such policies and procedures would help a covered clearing agency better react to periods of market stress. Therefore, the Commission has determined not to adopt the commenter's suggested approach.

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(15) as proposed. Because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(15), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address general business risk:

- Whether it has robust management and control systems to identify, monitor, and manage general business risks, including losses from poor execution of business strategy, negative cash flows, or unexpected and excessively large operating expenses;
- whether it holds liquid net assets funded by equity (such as common stock, disclosed reserves, or other retained earnings) so that it can continue operations and services as a going concern if it incurs general business losses;
- whether the amount of liquid net assets funded by equity it holds is determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken;
- whether it maintains a viable recovery or orderly wind-down plan and holds sufficient liquid net assets funded by equity to implement this plan that, at a minimum, are funded by equity equal to at least six months of current operating expenses, in addition to resources held to cover participant defaults or other risks addressed by its financial resources;
- whether assets held to cover general business risk are of high quality and sufficiently liquid to allow the covered clearing agency to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions; and
- whether it maintains a viable plan, approved by the board of directors and updated no less than annually, for raising additional equity should its equity fall close to or below the amount needed.

With respect to Rule 17Ad–22(e)(15)(iii) and the policies and procedures for maintaining a viable plan, the Commission believes that a viable plan generally should enable the covered clearing agency to hold sufficient liquid net assets to achieve recovery or orderly wind-down. Therefore, the Commission believes that a covered clearing agency's policies and procedures generally should define when a covered clearing agency's equity falls close to the amount required by the rule, so that the covered clearing agency has policies and procedures that clearly define when the covered clearing agency should initiate the plan to raise additional equity. In developing such policies and procedures, a covered clearing agency generally should consider and account for circumstances that may require a certain length of time before any plan can be implemented. For example, before obtaining shareholder approval to issue new shares, a covered clearing agency may need to call a special meeting subject to a notice period.

In addition, with respect to the plan under Rule 17Ad–22(e)(15)(iii) being approved by the board of directors and updated at least annually, the board of a covered clearing agency generally should perform the approval not less than once every twelve months.

16. Rule 17Ad–22(e)(16): Custody and Investment Risks

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(16) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to safeguard its own and its participants' assets and minimize the risk of loss and delay in access to these assets. Proposed Rule 17Ad–22(e)(16) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to invest such assets in instruments with minimal credit, market, and liquidity risks.

b. Comments Received and Commission Response

The Commission received one comment on proposed Rule 17Ad–22(e)(16), which generally sought consideration of more prescriptive or granular aspects to the Commission's approach.[468] The commenter made several points about the proposed rule. First, the commenter noted that to mitigate the risks to participants from current CCP practices for participant collateral, including commingling, rehypothetication or title transfer arrangements, and investment practices, the Commission should provide additional guidance regarding the specific protections a covered clearing agency must employ to safeguard participants' collateral and invest such collateral in instruments with minimal credit, market, and liquidity risks.[469] Moreover, the commenter stated its belief that house collateral is inadequately segregated, current investment practices expose members to unnecessary risk of loss, and CCP investment policies and practices expose members to interest rate and credit risk through investments in higher-risk and longer-term instruments, putting member principal at risk.[470]

The commenter stated that, due to commingling and inadequate traceability, participants' rights to the return of their collateral upon the insolvency of a CCP are often uncertain and could be impaired.[471] The commenter also noted that some CCPs are permitted to rehypothecate participant securities collateral or to secure their investments using title

[467] *See* DTCC at 11.

[468] *See* The Clearing House at 3, 11–12.

[469] *See id.* at 3, 11.

[470] *See id.* at 11.

[471] *See id.*

transfer arrangements, each of which exposes participants to potential loss due to the unavailability of participant collateral (or its liquidation value) in the CCP's insolvency.[472]

For the purpose of minimizing investment risk and the risk of loss of participant collateral, the commenter recommended that the Commission confirm the applicability of the following protections with respect to a covered clearing agency's treatment of participant collateral:

- Limit a CCP's ability to encumber or impair participants' rights in guaranty fund contributions and initial margin posted to the CCP in support of proprietary positions.[473]
- Specify standards for the establishment, designation, and maintenance of accounts for the safekeeping of participant collateral, and related requirements to ensure the treatment of such funds as belonging to the relevant participants in the event of the insolvency of the covered clearing agency and otherwise; [474]
- Further specify the types of highly liquid investments (and, as applicable, eligible counterparties and issuers), and related concentration and weighted average maturity limits, applicable to the investment of participant collateral, as well as the capital of the covered clearing agency committed to the default waterfall; [475]
- Prohibit the rehypothecation of non-cash collateral of non-defaulting participants and limit such rehypothecation in the case of a defaulting participant to circumstances where an immediate liquidation of the non-cash collateral would lead to severe asset value depreciation; [476] and
- Require to use pledged arrangements when taking collateral, except where title transfer arrangements are necessitated by applicable law.[477]

The commenter also recommended that the Commission specify a covered clearing agency's disclosure obligations with respect to its collateral investment activities, including the extent of reuse of participant collateral, eligible counterparties for collateral rehypothecation, the covered clearing agency or participant's rights to the collateral posted to it and the covered clearing agency's investment policies, balances, and concentrations.[478]

Much of the clarification and guidance sought by the commenter, in the Commission's view, would entail the imposition of prescriptive and granular requirements on covered clearing agencies with respect to their custody and investment risks. Such ex ante requirements would be inconsistent with the Commission's principles-based approach to Rule 17Ad–22(e).[479] Although it is possible that the commenter's suggestions could be appropriate in certain circumstances, the Commission believes that these comments do not take into account the variation among covered clearing agencies with respect to the different markets served, products cleared, and risk management needs. Nevertheless, the Commission believes that Rule 17Ad–22(e)(16) already encompasses the commenter's suggestions, and that many covered clearing agencies already employ and can continue to consider these suggestions when designing or revising policies and procedures under the rule. The Commission therefore believes that no modifications to Rule 17Ad–22(e)(16) are necessary.

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(16) as proposed. Because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(16), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address custody and investment risk:

- Whether it holds its own and its participants' assets at supervised and regulated entities that have robust accounting practices, safekeeping procedures, and internal controls that fully protect these assets;
- whether it has prompt access to its assets and the assets provided by participants, when required;
- whether it evaluates and understands its exposures to its custodian banks, taking into account the full scope of its relationships with each;
- whether its investment strategy is consistent with its overall risk management strategy and fully disclosed to its participants; and
- whether its investments are secured by, or claims on, high-quality obligors, allowing for quick liquidation with little, if any, adverse price effect.

The Commission also notes that failure by a clearing agency to hold assets in instruments with minimal credit, market, and liquidity risk may limit the clearing agency's ability to access these assets promptly. The Commission therefore believes that covered clearing agencies, in seeking to satisfying the requirements of Rule 17Ad–22(e)(16), generally should seek to minimize the risk of loss or delay in access by holding assets that are highly liquid (*e.g.,* cash, U.S. Treasury securities, or securities issued by a U.S. government agency) and by using only supervised and regulated entities such as banks to act as custodians for the assets and to facilitate settlement. The Commission further notes that the rule does not require that a covered clearing agency invest its own and its participants' assets but that it have policies and procedures for investing such assets in instruments with minimal credit, market, and liquidity risks when it determines to so invest.

17. Rule 17Ad–22(e)(17): Operational Risk Management

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(17) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risk. In proposing Rule 17Ad–22(e)(17), the Commission noted that operational risk involves, among other things, the likelihood that deficiencies in information systems or internal controls, human errors or misconduct, management failures, unauthorized intrusions into corporate or production systems, or disruptions from external events such as natural disasters, would adversely affect the functioning of a clearing agency.[480]

Proposed Rule 17Ad–22(e)(17)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. Proposed Rule 17Ad–22(e)(17)(ii) would require a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. Finally, proposed Rule 17Ad–22(e)(17)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a

[472] *See id.*

[473] *See id.* at 11–12.

[474] *See id.* at 12.

[475] *See id.*

[476] *See id.*

[477] *See id.*

[478] *See id.*

[479] *See supra* Part II.B.

[480] *See* CCA Standards proposing release, *supra* note 5, at 29551.

business continuity plan that addresses events posing a significant risk of disrupting operations.[481]

b. Comments Received and Commission Response

The Commission received one comment that generally supported the Commission's approach in Rule 17Ad–22(e)(17). The commenter expressed a belief that most, if not all, businesses of the size and significance of a covered clearing agency must commit to and undertake plans to manage operations in the event of a disruption, including through the adoption of a formal business continuity plan.[482] The commenter also argued that anything less risks major repercussions and the loss of investor trust. In response, the Commission notes that Rule 17Ad–22(e)(17) addresses the commenter's concerns by including requirements for policies and procedures with respect to a business continuity plan.

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(17) with one modification: Because the text in Rule 17Ad–22(e)(17)(ii) for ''establishing and maintaining policies and procedures reasonably designed'' is duplicative of the requirement under Rule 17Ad–22(e) to have policies and procedures reasonably designed to establish, maintain, implement, and enforce the requirements thereunder, the Commission is removing the duplicative text. In addition, the Commission notes that Rule 17Ad–22(e)(17) includes similar provisions to Rule 17Ad–22(d)(4), and that, like Rule 17Ad–22(d)(4), Rule 17Ad–22(e)(17) concerns operational risks that stem from deficiencies in internal controls, human errors, and management failures.[483] The Commission also notes that Rule 17Ad–22(e)(17) includes requirements related to operational risk management in addition to the requirements in Regulation SCI, previously discussed in Part I.A.4. The Commission therefore notes that a covered clearing agency, in seeking to address the requirements of Rule 17Ad–22(e)(17), generally should remain mindful of related requirements under other Commission rules and regulation.

Further, because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(17), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address operational risk:

- Whether it establishes a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, and manage operational risks;
- whether its board of directors clearly define the roles and responsibilities for addressing operational risk and whether it endorses the covered clearing agency's operational risk-management framework;
- whether it clearly defines operational reliability objectives and whether it has policies in place that are designed to achieve its service-level objectives;
- whether the covered clearing agency ensures that it has scalable capacity adequate to handle increasing stress volumes and to achieve its service-level objectives;
- whether it has comprehensive physical and information security policies that address all potential vulnerabilities and threats;
- whether it has a business continuity plan that addresses events posing a significant risk of disrupting operations, including events that could cause a wide-scale or major disruption; and
- whether it identifies, monitors, and manages the risks that key participants, other covered clearing agencies, and service and utility providers might pose to its operations.

With respect to ''adequate, scalable capacity'' under Rule 17Ad–22(e)(17)(ii), the Commission believes that a covered clearing agency generally should have operational systems that can be extended or expanded based on its anticipated business needs. Further, the Commission believes that, to help limit disruptions that may impede the proper functioning of a covered clearing agency, covered clearing agencies generally should review their operations for potential weaknesses and develop appropriate systems, controls, and procedures to address weaknesses the rule seeks to mitigate.

18. Rule 17Ad–22(e)(18): Access and Participation Requirements

As proposed, Rule 17Ad–22(e)(18) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other FMUs. Proposed Rule 17Ad–22(e)(18) also would require that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency and to monitor compliance with participation requirements on an ongoing basis.[484]

The Commission received one comment regarding Rule 17Ad–22(e)(18). The commenter expressed support for the fair and open participation requirements under the proposed rule, the public disclosure of such participation criteria under the proposed rule, and the proposed requirement that such criteria be risk-based.[485]

The Commission is adopting Rule 17Ad–22(e)(18) as proposed. Moreover, because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(18), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address access and participation requirements:

- Whether it allows for fair and open access to its services, including by direct and where relevant, indirect participants and other covered clearing agencies, based on reasonable risk-related participation requirements;
- whether its participation requirements are justified in terms of the safety and efficiency of the covered clearing agency and the markets it serves, are tailored to and commensurate with its specific risks, and are publicly disclosed; and
- whether it monitors compliance with its participation requirements on an ongoing basis and clearly defines and publicly discloses procedures for facilitating the suspension and orderly exit of a participant that breaches, or no longer meets, the participation requirements.

The Commission also notes that, in contrast to other requirements in Rule 17Ad–22(e) where the term ''transparent'' is used in the context of facilitating disclosure ''where appropriate,'' the requirement here for policies and procedures reasonably

[481] *See id.*

[482] *See* CFA Institute at 11.

[483] *See* CCA Standards proposing release, *supra* note 5, at 29551; *see also infra* Part IV.C.17 (also discussing the similar provisions between Rules 17Ad–22(e)(17) and (d)(4)); Clearing Agency Standards, *supra* note 5, at 66248 (discussing Rule 17Ad–22(d)(4)).

[484] *See* CCA Standards proposing release, *supra* note 5, at 29551–52.

[485] *See* CFA Institute at 11.

designed to establish ''publicly disclosed'' criteria for participation would necessarily require that the relevant policies and procedures be reasonably designed to provide for disclosure of such criteria for participation. The Commission also notes that membership standards at covered clearing agencies generally should seek to limit the potential for member defaults and, as a result, losses to non-defaulting members in the event of a member default. Using risk-based criteria helps to protect investors by limiting the participants of a covered clearing agency to those for which the covered clearing agency has assessed the likelihood of default.

19. Rule 17Ad–22(e)(19): Tiered Participation Arrangements

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(19) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants in the covered clearing agency to access the covered clearing agency's payment, clearing, or settlement facilities (hereinafter ''tiered participation arrangements''). In addition, proposed Rule 17Ad–22(e)(19) would require that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review the material risks to the covered clearing agency arising from such tiered participation arrangements.[486]

b. Comments Received and Commission Response

The Commission received several comments regarding tiered participation arrangements under Rule 17Ad–22(e)(19). One commenter believed that regular reviews of tiered participation arrangements are an important part of a covered clearing agency's ability to perform prompt and accurate clearance and settlement, to protect investors, and to safeguard securities and funds.[487] However, some commenters focused on particular aspects of the proposal in seeking to have the Commission consider a specific approach or issue. Comments directed to these particular substantive aspects of Rule 17Ad–22(e)(19) are discussed below.

i. Need for Due Diligence of Indirect Participants

One commenter believed that the Commission did not provide sufficient guidance regarding who would be indirect participants of a covered clearing agency and, as a result, cannot ascertain whether it is correctly reading the proposed rule.[488] The commenter further expressed the view that it is not appropriate for a covered clearing agency to perform due diligence on the clients of its clearing members for the following reasons:

- The covered clearing agency has no direct, contractual relationship to these clients;
- Performing due diligence on what may be a very large number of clients could be very burdensome for the covered clearing agency; and
- Clients may object to due diligence inquiries from a covered clearing agency and choose to move their business to another CCP that is not required to perform such due diligence.[489]

Instead, the commenter expressed a view that a covered clearing agency can reasonably rely on the due diligence that its clearing members perform on their clients and should not have to perform its own due diligence on these indirect participants.[490]

In response, the Commission first notes that the scope of Rule 17Ad–22(e)(19) does not only contemplate clients of clearing members. Instead, the rule also contemplates situations where other parties may enter into a contractual arrangement with a clearing member, particularly arrangements that create credit exposures to the clearing member, such as where a third party acts as guarantor to an obligation on behalf of the clearing member, may be indirect participants in the covered clearing agency. The Commission therefore believes that the alternative approach suggested by the commenter above does not entirely contemplate the scope of indirect participants addressed by the Rule 17Ad–22(e)(19).

The Commission acknowledges that there are limits on the extent to which a covered clearing agency can, in practice, observe or influence a direct participant's commercial or contractual relationships, and that these limits will, in turn, affect the appropriateness of a covered clearing agency performing due diligence on its indirect participants. However, a clearing agency will often have access to information, including through the due diligence that a member performs on its clients as well as information on transactions undertaken on behalf of indirect participants. A clearing agency can also set direct participation requirements that may include criteria relating to how direct participants manage relationships with their customers in-so-far as these criteria are relevant for the safe, efficient, and effective operation of the clearing agency. Accordingly, a covered clearing agency generally should have the ability to identify the types of risk that could arise from tiered participation and should monitor concentrations of such risk. Further, the Commission notes that some direct and indirect participants of the covered clearing agency will be registered with the Commission as, for example, a broker-dealer, and therefore be subject to their own requirements for reporting and financial responsibility,[491] which a covered clearing agency could use in developing policies and procedures for tiered participation arrangements. In light of the availability of the tools described above, the Commission does not believe that the commenter's suggestion for a covered clearing agency to rely on due diligence performed by its clearing members is an appropriate alternative for the purposes of addressing the requirements a covered clearing agency must satisfy under Rule 17Ad–22(e)(19).

ii. Need To Obtain Information From Clearing Members

One commenter expressed concern that proposed Rule 17Ad–22(e)(19) could be interpreted as requiring a covered clearing agency to obtain information from its clearing members identifying with specificity each of the customers attached to each cleared transaction and to routinely monitor customer-level risk with respect to each such customer.[492] The commenter acknowledged that covered clearing agencies should have the ability to gather certain information from its

[486] *See* CCA Standards proposing release, *supra* note 5, at 29553.

[487] *See* CFA Institute at 11–12.

[488] *See* LCH at 5.

[489] *See id.*

[490] *See id.*

[491] *See, e.g.,* 17 CFR 240.15c3–1, 15.c3–3 (setting forth net capital and customer protection requirements for broker-dealers); 17 CFR 240.17h–1T, 17h–2T (setting forth requirements that certain broker-dealers maintain, preserve, and file a quarterly summary of certain information regarding those affiliates, subsidiaries and holding companies whose business activities are reasonably likely to have a material impact on their own financial and operating condition); 17 CFR 240.17a–3, 17a–4, 17a–5, 17a–11 (setting forth requirements for broker-dealers to maintain books and records, file periodic reports including quarterly and annual financial statements, and report to the Commission and the appropriate SRO regarding net capital, recordkeeping, and other operational problems, within certain time periods).

[492] *See* OCC at 15.

direct participants and that some circumstances may require clearing agencies to monitor the systemic risk created by one or more significant indirect participants, but the commenter believed it is inappropriate for a covered clearing agency to routinely police the systemic risks created by each indirect participant.[493] In response, the Commission notes that Rule 17Ad–22(e)(19) requires a covered clearing agency to have policies and procedures governing risk management that considers a clearing member's customer relationships, but it does not require a covered clearing agency to actively risk manage those customer relationships on behalf of each clearing member. Instead, Rule 17Ad–22(e)(19) requires policies and procedures that identify, monitor, and manage the material risks to the covered clearing agency arising from tiered participation arrangements. Such policies and procedures would require a covered clearing agency to account for the range of risks stemming from each clearing member, which necessarily includes risks resulting from the clearing member's relationships with its customers, as previously described above. To engage in effective risk management of a clearing member, the covered clearing agency would need a complete picture of cleared transactions attributed to each clearing member, but it may require less specific information from the clearing member with respect to customers so long as the information it does receive provides the covered clearing agency with a comprehensive understanding of the material risks posed to the covered clearing agency by each clearing member.[494]

iii. Recommendation for a Risk-Based Approach

One commenter expressed the belief that covered clearing agencies should use a risk-based approach when developing policies and procedures to implement the requirement that a covered clearing agency have policies and procedures reasonably designed to identify, monitor, and manage the risks to the clearing agency arising from indirect participants.[495] The commenter expressed the belief that a covered clearing agency should provide direct participants with information relevant to their activities (both direct and indirect) that is available to the clearing agency, thus enabling direct participants to use such information to evaluate and manage its correspondent customer relationships.[496] The commenter also expressed a view that a covered clearing agency should evaluate the risks presented to it by indirect relationships in the context of a direct participant's overall risk management policies and procedures.[497] The commenter expressed the belief that such policies will need to take into account the level of information available to the covered clearing agency and that there needs to be a distinction between the supervisory oversight of the direct participant by its primary supervisor and the type of oversight that a clearing agency can be expected to provide.

The Commission agrees that such a risk-based approach could be one approach to achieving compliance with Rule 17Ad–22(e)(19), but believes that each covered clearing agency should determine the appropriate approach for determining compliance with Rule 17Ad–22(e)(19) in light of the composition of its members and the products they clear, as well as its risk management framework. Policies and procedures at a covered clearing agency for managing risks from indirect participants will necessarily be constrained to some degree by the lack of a direct contractual agreement between the covered clearing agency itself and the indirect participant. The Commission notes, however, that evaluating and managing the risk from direct participants, pursuant to Rule 17Ad–22(e)(19), would require policies and procedures consistent with the Commission's statements in Parts II.C.19.b.i and ii above. As noted there, the Commission acknowledges that direct and indirect participants in a covered clearing agency may be regulated entities themselves subject to reporting and other requirements that may help facilitate the covered clearing agency's management of risk from tiered participation arrangements.[498]

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(19) as proposed. Because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(19), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address tiered participation arrangements:

- Whether a covered clearing agency ensures that its rules, procedures, and agreements allow it to gather sufficient information about indirect participation to identify, monitor, and manage any material risks to the covered clearing agency arising from such tiered participation arrangements;
- whether it identifies material dependencies between direct and indirect participants that might affect the covered clearing agency;
- whether it identifies indirect participants responsible for a significant proportion of transactions processed by the covered clearing agency and indirect participants whose transaction volumes or values are large relative to the capacity of the direct participants through which they access the covered clearing agency to manage the risks arising from these transactions; and
- whether it regularly reviews risks arising from tiered participation arrangements and takes mitigation action when appropriate.

In addition to the guidance above, the Commission notes that, when addressing its compliance with Rule 17Ad–22(e)(19), a covered clearing agency could consider whether its rules, policies, procedures, and agreements with direct participants allow it to gather basic information about indirect participants to identify, monitor, and manage any material risks to the covered clearing agency arising from such tiered participation arrangements. This information should help enable the covered clearing agency to identify (i) the proportion of activity that direct participants conduct on behalf of indirect participants, (ii) direct participants that act on behalf of a material number of indirect participants, (iii) indirect participants with significant volumes or values of transactions in the system, and (iv) indirect participants whose transaction volumes or values are large relative to those of the direct participants through which they access the covered clearing agency. In this vein, a covered clearing agency could consider an indirect participant's status as a designated market maker or supplemental liquidity provider in identifying material risks to the covered clearing agency. A covered clearing agency could also consider different trading strategies or changes in trading strategies used by indirect participants in identifying, monitoring, and managing material risks to the covered clearing agency.

The Commission also notes that Rule 17Ad–22(e)(19) is intended to promote the ongoing management of risks associated with tiered participation arrangements stemming from the

[493] *See id.*

[494] *See supra* note 491 (describing examples of such information that is available for certain participants that are separately registered with the Commission).

[495] *See* DTCC at 11.

[496] *See id.*

[497] *See id.*

[498] *See supra* notes 491, 494, and accompanying text.

dependencies and risk exposures that such arrangements can create. However, because proposed Rule 17Ad–22(e)(19) only addresses the situation where indirect participants in the covered clearing agency rely on direct participants, the Commission notes that Rule 17Ad–22(e)(19) would not apply in the circumstance where a covered clearing agency providing CSD services has members that are broker-dealers maintaining accounts for retail customers.

20. Rule 17Ad–22(e)(20): Links

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(20) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link with one or more other clearing agencies, FMUs, or trading markets.[499] In proposing the rule, the Commission proposed to define ''link'' in Rule 17Ad–22(a)(10) to mean any set of contractual and operational arrangements between a covered clearing agency and one or more other clearing agencies, FMUs, or trading venues that connect them directly or indirectly for the purposes of participating in settlement, cross margining, expanding its services to additional instruments and participants, or for any other purposes material to their business.[500]

b. Comments Received and Commission Response

The Commission received no comments regarding the substance of the proposed rule. One comment requested that the Commission phase-in implementation of Rule 17Ad–22(e)(20),[501] and that comment is addressed in Part II.G below.

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(20) as proposed.[502] The Commission is adopting the definition of ''link'' with one modification and moving it to Rule 17Ad–22(a)(8), as previously discussed.[503] Specifically, in the definition of ''link,'' the Commission is replacing the word ''venues'' with ''markets'' to improve consistency with Rule 17Ad–22(e)(20).[504]

Further, because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(20), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address links:

- Whether it identifies, monitors, and manages all potential sources of risk arising from the link arrangement, before entering into a link arrangement and on an ongoing basis once the link is established;
- whether a link has a well-founded legal basis, in all relevant jurisdictions, that support its design and provides adequate protection to the covered clearing agencies involved in the link;
- whether linked CSDs measure, monitor, and manage the credit and liquidity risk arising from each other;
- whether provisional transfers of securities between linked CSDs are prohibited or, at a minimum, the retransfer of provisionally transferred securities are prohibited prior to the transfer becoming final.
- whether an investor CSD can only establish a link with an issuer CSD if the arrangement provides a high level of protection for the rights of the investor CSD's participants;
- whether an investor CSD that uses an intermediary to operate a link with an issuer CSD measures, monitors, and manages the additional risks arising from the use of the intermediary.
- before entering into a link with a CCP, whether it identifies and manages the potential spill-over effects from the default of the linked CCP; and
- when in a CCP link arrangement, whether it is able to cover, at least on a daily basis, its current and potential future exposures to the linked CCP and its participants, if any, fully with a high degree of confidence without reducing the covered clearing agency's ability to fulfill its obligations to its own participants at any time.

In addition, the Commission reiterates that the requirements for policies and procedures for linkages must be addressed by each covered clearing agency at the level of the covered clearing agency.[505] Therefore, each covered clearing agency under Rule 17Ad–22(e) would itself need to adopt or ratify policies and procedures for linkages with respect to its own business, even if it is a member of a group or under a holding company that has group-level policies and procedures.

21. Rule 17Ad–22(e)(21): Efficiency and Effectiveness

As proposed, Rule 17Ad–22(e)(21) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it is efficient and effective in meeting the requirements of its participants and the markets it serves. Proposed Rule 17Ad–22(e)(21)(i) through (iv) would require a covered clearing agency's management to regularly review the efficiency and effectiveness of its (i) clearing and settlement arrangements; (ii) operating structure, including risk management policies, procedures, and systems; (iii) scope of products cleared, settled, or recorded; and (iv) use of technology and communication procedures.[506]

The Commission received one comment in support of the proposed approach. The commenter expressed support for the requirement that a covered clearing agency review its efficiency and effectiveness in meeting the requirements of its participants and the markets it serves and for the specific areas to be reviewed as set forth in proposed Rule 17Ad–22(e)(21).[507]

The Commission is adopting Rule 17Ad–22(e)(21) with one modification: The Commission is removing reference to ''recorded'' products under Rule 17Ad–22(e)(21)(iii) because recording products is not a function of covered clearing agencies. In addition, because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(21), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address efficiency and effectiveness:

- Whether its design meets the needs of its participants and the markets it serves, particularly with regard to choice of a clearance and settlement arrangement, operating structure, scope of products cleared, settled, or recorded, and use of technology and procedures;
- whether it clearly defines goals and objectives that are measurable and achievable, such as in the areas of minimum service levels, risk-management expectations, and business priorities; and

[499] *See* CCA Standards proposing release, *supra* note 5, at 29553.

[500] *See id.* at 29554. The Commission received no comments regarding the definition of ''link'' and is adopting it with one modification, as discussed in Part II.C.20.c. Because of other modifications to Rule 17Ad–22(a), the definition of ''link'' is also being moved to Rule 17Ad–22(a)(8). *See infra* Part VI.

[501] *See* DTCC at 13–14 & n.46.

[502] *See* Rule 17Ad–22(e)(20), *infra* Part VI.

[503] *See supra* note 500.

[504] *See* Rule 17Ad–22(a)(8), *infra* Part VI.

[505] *See supra* Part II.B.3.c.

[506] *See* CCA Standards proposing release, *supra* note 5, at 29554.

[507] *See* CFA Institute at 12.

• whether it establishes mechanisms for the regular review of its efficiency and effectiveness.

22. Rule 17Ad–22(e)(22): Communication Procedures and Standards

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(22) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it uses, or at a minimum accommodates, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement.

b. Comments Received and Commission Response

Two commenters expressed views regarding Rule 17Ad–22(e)(22). The first commenter supported the Commission's proposed rules requiring the use of internationally accepted communication procedures and standards. The commenter expressed the belief that such a requirement will result in more effective communication with direct and indirect participants and will result in a more prompt and accurate process.[508]

The second commenter noted that users of its systems that process transactions only in a particular market typically rely on long-standing, highly automated communications methods and messaging formats that are viewed as industry-standard, regardless of international standards. The commenter urged that these users not be required to retool their communication systems in such a market to comply with international communication standards and that such a requirement may impose substantial costs devoid of any material benefits. The commenter noted that the proposed rule permits a covered clearing agency to accommodate international standards as an equally appropriate means of satisfying the requirement as is the exclusive use of a standard (*e.g.,* a clearing agency providing such an accommodation can permit users who wish to use international standards exclusively to do so, without forcing those users who do not wish (and have no need to) use the international standards to convert to them). Additionally, the commenter read the proposed provision as intending to provide sufficient flexibility to enable a covered clearing agency, when evaluating systems upgrades or new services, to take into account several factors to select the protocol that it deems most appropriate for the circumstances.[509]

In response to the second commenter, the Commission notes that Rule 17Ad–22(e)(22) requires policies and procedures that at a minimum accommodate international standards. A covered clearing agency that does not rely on existing international standards as part of its own communication protocols could comply with Rule 17Ad–22(e)(22) by having policies and procedures that require its systems to be able to receive communications from and transmit communications to a system that uses the international standards. However, the Commission also believes that accommodating international standards does not require implementing international standards as the only or primary communication protocol, particularly if other automated messaging formats exist that are widely used and considered industry standard in the United States.

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(22) as proposed.[510] The Commission notes that the ability of participants to communicate with a covered clearing agency in a timely, reliable, and accurate manner is important to achieving prompt and accurate clearance and settlement.

23. Rule 17Ad–22(e)(23): Disclosure of Rules, Key Procedures, and Market Data

a. Proposed Rule

As proposed, Rule 17Ad–22(e)(23) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain clear and comprehensive rules and procedures that provide for the specific disclosures enumerated in the rule, as discussed below. Proposed Rule 17Ad–22(e)(23)(i)–(iii) would require such policies and procedures to specifically require a covered clearing agency to (i) publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures; (ii) provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency; and (iii) publicly disclose relevant basic data on transaction volume and values.

Proposed Rule 17Ad–22(e)(23)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain clear and comprehensive rules and procedures that provide for a comprehensive public disclosure of its material rules, policies, and procedures regarding governance arrangements and legal, financial, and operational risk management, accurate in all material respects at the time of publication, including (i) a general background of the covered clearing agency, including its function and the market it serves, basic data and performance statistics on its services and operations, such as basic volume and value statistics by product type, average aggregate intraday exposures to its participants, and statistics on the covered clearing agency's operational reliability, and a description of its general organization, legal and regulatory framework, and system design and operations; (ii) a standard-by-standard summary narrative for each applicable standard set forth in proposed Rules 17Ad–22(e)(1) through (22) with sufficient detail and context to enable the reader to understand its approach to controlling the risks and addressing the requirements in each standard; (iii) a summary of material changes since the last update of the disclosure; and (iv) an executive summary of the key points regarding each.[511] Proposed Rule 17Ad–22(e)(23)(v) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the comprehensive public disclosure required under proposed Rule 17Ad–22(e)(23)(iv) is updated not less than every two years, or more frequently following changes to its system or the environment in which it operates to the extent necessary, to ensure statements previously provided remain accurate in all material respects.[512]

b. Comments Received and Commission Response

One commenter expressed support for the Commission's proposed requirements regarding the disclosures set forth in proposed Rule 17Ad–22(e)(23). The commenter expressed the belief that such disclosures are necessary to enhance transparency and allow investors and other participants to obtain the information necessary to evaluate covered clearing agencies and also believes that such an approach may

[508] *See* CFA Institute at 12.

[509] *See* DTCC at 11–12.

[510] Relevant internationally accepted communication procedures and standards could include messaging standards such as SWIFT, FIX, and FpML.

[511] *See id.* at 29556.

[512] *See id.* at 29557.

add to market discipline.[513] A second commenter expressed support for strong and effective transparency requirements for covered clearing agencies.[514] However, a number of commenters requested that the Commission consider amending the rule to incorporate more granular or prescriptive guidance and requirements, with a particular focus on achieving consistency with international standards and enhanced disclosures regarding emergency actions by covered clearing agencies. The Commission discusses these particular comments below.

i. Comprehensive Public Disclosure

One commenter read the leading language in proposed Rule 17Ad–22(e)(23)(iv) to imply a requirement to create a comprehensive document that should address how the clearing agency's governance arrangements, legal structure, approach to risk management, and financial arrangements operate, as opposed to implying a separate obligation to publicly disclose all such policies and procedures, irrespective of whether they relate to internal operational policies or are otherwise comprehended within the requirements of 17Ad–22(e)(23)(i).[515] The Commission believes that the commenter's interpretation of the leading language in proposed Rule 17Ad–22(e)(23)(iv) is consistent with the requirements of the rule.

In the CCA Standards proposing release, the Commission made several statements regarding the requirements under Rule 17Ad–22(e)(23):

- With respect to the basic data and performance statistics envisioned by the rule, the Commission identified, as relevant to the requirement, statistics on the covered clearing agency's operational reliability so that the relevant stakeholders and the general public have data regarding, for example, performance targets for systems and the actual performance thereof over specified periods, as well as targets for recovery.
- With respect to the standard-by-standard summary narrative, the Commission sought to elicit a summary discussion of the covered clearing agency's implementation of policies and procedures that would need to be established, implemented, maintained and enforced by a covered clearing agency in response to proposed Rules 17Ad–22(e)(1) through (22).
- With respect to material changes to the disclosure, the Commission stated that it would expect a covered clearing agency to consider its particular circumstances, such as, for example, changes in the scope of services provided by the covered clearing agency, in satisfying this requirement.[516]

The Commission further notes that the comprehensive public disclosure is intended to elicit all material information that would address compliance with each of the requirements in Rule 17Ad–22(e), along with information such as its function and the markets it serves and basic data and performance statistics. Moreover, in proposing Rule 17Ad–22(e)(23), the Commission also stated that two purposes of Rule 17Ad–22(e)(23) were to (i) provide participants with the information necessary to, at a minimum, identify and evaluate the risks and costs associated with the use of a covered clearing agency, thereby promoting transparency and enhancing competition and market discipline, and (ii) provide other stakeholders, including regulators and the public, with information that facilitates informed oversight and decision-making regarding each covered clearing agency.

The Commission is modifying Rule 17Ad–22(e)(23)(iv) so that the language more closely tracks the categories of requirements in Rule 17Ad–22(e) and the statements immediately above. The purpose of this modification is to make clear that the comprehensive public disclosure is intended to describe the material rules, policies and procedures of the covered clearing agency related to compliance with Rule 17Ad–22(e), rather than require a complete disclosure of all rules, policies, and procedures. As adopted, the leading language of Rule 17Ad–22(e)(23)(iv) will require policies and procedures providing for a comprehensive public disclosure that describes the covered clearing agency's material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework, accurate in all material respects at the time of publication.

ii. Consistency With International Standards

One commenter recommended that the Commission provide guidance that it will interpret and administer Rule 17Ad–22(e)(23) as being consistent with PFMI disclosure framework to ensure that clearing participants have sufficient information to conduct diligence and assess the risks of exposure to a covered clearing agency and to maintain consistency with evolving international standards.[517] In response, and as previously noted, the Commission intends to interpret and administer Rule 17Ad–22(e)(23) consistent with Section 17A of the Exchange Act and, to the extent consistent with Section 17A, with relevant international standards such as the PFMI and the PFMI disclosure framework.[518] Additionally, the Commission notes that a covered clearing agency could consider the PFMI quantitative disclosures to develop its policies and procedures in compliance with Rule 17Ad–22(e)(23).[519] The Commission believes that the PFMI, the PFMI disclosure framework, and the PFMI quantitative disclosures can be useful tools to help a covered clearing agency consider how to disclose information to its participants, other relevant stakeholders, or the public. However, the Commission also notes that publishing the PFMI disclosure framework or the PFMI quantitative disclosures does not, in and of itself, constitute compliance with Rule 17Ad–22(e)(23).[520] As previously discussed, Rule 17Ad–22(e)(23) requires that a covered clearing agency (i) publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures; (ii) provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency; and (iii) publicly disclose relevant basic data on transaction volume and values. It also requires, as discussed in Part II.C.23.b.i, a comprehensive public disclosure consistent with Rule 17Ad–22(e)(23)(iv). The Commission believes that covered clearing agencies may use a number of different approaches to make disclosures under Rule 17Ad–22(e)(23), and the Commission notes that policies and procedures for such disclosures must be in compliance with Rule 17Ad–22(e)(23).

iii. Disclosures Regarding Emergency Actions

One commenter stated that, when taking emergency actions, CCPs must consider the interests of members and

[513] *See* CFA Institute at 13.

[514] *See* The Clearing House at 15.

[515] *See* DTCC at 13.

[516] *See* CCA Standards proposing release, *supra* note 5, at 29557.

[517] *See* ISDA at 6; *see also supra* note 41 (providing a citation for the PFMI disclosure framework).

[518] *See supra* Part I.A.5. (discussing the relevant international standards).

[519] *See supra* note 41 (providing a citation for the PFMI quantitative disclosures).

[520] A covered clearing agency independently prepares and publishes these disclosure documents, and the Commission does not review, opine on, or approve them.

market stability in addition to those of CCP owners.[521] The commenter identified the following concerns:

- Changes to CCP rules and procedures and other actions taken during emergencies can affect the economic position of members, imposing unexpected losses and liquidity demands, and can thus have spillover effects in the broader market.[522]
- Unchecked and unbounded discretion could permit a CCP to alter the fundamental economic relationship between it and its members without notice or a chance for members to evaluate the consequences of such changes.[523]

In response, the Commission notes that the above comments are most directly relevant to the Commission's discussion of crisis and emergency decision-making with respect to Rule 17Ad–22(e)(2). The Commission has previously addressed comments regarding crisis or emergency decision-making in Part II.C.2.b.v.

iv. Disclosures Regarding Participant-Default Rules and Procedures

One commenter recommended that the Commission make some clarifications to the requirement in proposed Rule 17Ad–22(e)(23)(ii) that a covered clearing agency provide sufficient detail to enable participants to identify and evaluate the risks they incur by participating in the covered clearing agency. Specifically, the commenter recommended that the Commission require the covered clearing agency to disclose (i) to its participants the policies and procedures established by the covered clearing agency pursuant to proposed Rule 17Ad–22(e)(13), and (ii) to its participants and their customers, the financial risks to which they would be subject in a scenario in which the covered clearing agency's credit losses upon the default of one or more participants exceed the resources designated to absorb such losses.[524] As discussed above in connection with the requirements for the comprehensive public disclosure, the two purposes of proposing Rule 17Ad–22(e)(23) were to (i) provide participants with the information necessary to, at a minimum, identify and evaluate the risks and costs associated with the use of a covered clearing agency, and (ii) provide other stakeholders, including regulators and the public, with information that facilitates informed oversight and decision-making regarding each covered clearing agency.[525] Pursuant to Rule 17Ad–22(e)(23)(iv), the comprehensive public disclosure is intended to provide participants with the information necessary to, at a minimum, identify and evaluate the risks and costs associated with the use of a covered clearing agency. In addition, a covered clearing agency's recovery and wind-down plans consistent with Rule 17Ad–22(e)(3) would also provide further insight into the financial risks to which participants and their customers may be subject in a scenario in which the covered clearing agency's credit losses exceed the resources designated to absorb such losses. Accordingly, the Commission believes that the required public disclosure will encompass the information that the commenter seeks.

The same commenter also recommended that the Commission clarify that a covered clearing agency may not, pursuant to emergency authority or otherwise, modify its rules, policies, or procedures in a manner that would materially increase a non-defaulting participant's exposure to loss or the extent of the covered clearing agency's recourse to a non-defaulting participant's assets, or redefine the economic terms of outstanding cleared contracts, without a reasonable prior notice and transition period prior to effectiveness.[526] The commenter further stated that a reasonable prior notice period for such a modification would be one that is sufficient to enable a non-defaulting participant to complete the process of withdrawal from participant status, in accordance with the rules of the covered clearing agency, under reasonable assumptions that take into account the demonstrated liquidity of the relevant product or asset type.[527] In addition, the commenter stated that any such modification that takes place following the occurrence of a default or series of defaults involving one or more participants and prior to expiration of the covered clearing agency's ''cooling-off period'' should not take effect until after the expiration of that period.[528] For the commenter's purposes, the term ''cooling-off period'' referred to the period following the default of one or more participants during which losses accrued by the covered clearing agency may be satisfied by recourse to the clearing or guaranty fund contributions of non-defaulting participants, notwithstanding the intervening withdrawal from participant status of one or more such participants.[529] The commenter's recommendations contemplated that cooling-off periods will continue to be specified in the rules of a covered clearing agency, subject to Commission review. According to the commenter, although appropriate cooling-off periods may vary by product or asset type, the commenter believed that the Commission should, in reviewing a covered clearing agency's rules, ensure that its cooling-off period(s) are of sufficient duration following a participant default (or the last in a series of substantially contemporaneous participant defaults) to allow the relevant market to return to stability under reasonable assumptions.[530] In response, the Commission notes that the above comments are beyond the scope of Rule 17Ad–22(e)(23), which pertains to disclosures, but instead are relevant to crisis and emergency decision-making, which are discussed above in Part II.C.2.b.v.

v. Additional Disclosures

One commenter believed that, to enhance participants' ability to evaluate their risks, the Commission should require a covered clearing agency to provide their participants with additional, more specific disclosures regarding its default rules and procedures, custody and collateral investment activities, methodologies for determining initial margin requirements and clearing or guaranty fund contributions, stress testing methodologies, and the covered clearing agency's treatment of participant initial margin and clearing or guaranty fund contributions.[531] The Commission notes that each of these topic areas are addressed by requirements under Rule 17Ad–22(e),[532] and therefore these topic

[521] *See* The Clearing House, annex, at 24.

[522] *See id.*

[523] *See id.* at 25.

[524] *See* The Clearing House at 7.

[525] *See supra* Part II.C.23.b.i.

[526] *See* The Clearing House at 7.

[527] *See id.* at 7 n.16.

[528] *See id.*

[529] *See id.*

[530] *See id.*

[531] *See* The Clearing House at 3, 15. The commenter further stated that, based on current disclosure practices, members are unable to effectively measure or manage their risk exposure to CCPs, and that disclosure to a CCP's risk committee is generally insufficient due to confidentiality restrictions, which prevents the risk committee from being able to share relevant information with their employer clearing member (and, further, not all clearing members even have employees on the CCP's risk committee). *See id.,* annex at 26, 27.

[532] *See supra* Parts II.C.4 (discussing requirements for guaranty fund contributions, allocation of losses pursuant to the default waterfall, and stress testing for credit risk under Rule 17Ad–22(e)(4)), II.C.5 (discussing requirements for collateral under Rule 17Ad–22(e)(5)), II.C.6 (discussing requirements for margin under Rule 17Ad–22(e)(6)), II.C.7 (discussing requirements for stress testing for liquidity risk under Rule 17Ad–22(e)(7)), II.C.13 (discussing requirements for participant-default

areas are also the types of material information that would constitute elements of the comprehensive public disclosure required under Rule 17Ad–22(e)(23)(iv).[533]

To facilitate sufficient disclosure, the commenter recommended that the Commission adopt the recommendations developed by the FRB of New York's Payments Risk Committee for participant due diligence of CCPs in these and other areas.[534] The commenter stated that obtaining information in these areas is necessary for participants to adequately identify and evaluate the risks they incur by participating in a CCP. Like the PFMI disclosure framework and the PFMI quantitative disclosures, the framework set forth by the FRB Payments Risk Committee may be another useful tool to help a covered clearing agency consider how best to disclose information to its participants, other relevant stakeholders, or the public, but, as noted above, should not be viewed as a substitute for compliance with Rule 17Ad–22(e)(23) and the requirements of Section 17A of the Exchange Act. The Commission further notes that the disclosure required by Rule 17Ad–22(e)(23) marks a significant increase in the level and detail of disclosure that a covered clearing agency will be required to provide to its participants and the public, and that such disclosure will also encompass much of the information covered in the framework established by the FRB Payments Risk Committee. Therefore, the Commission declines to further modify Rule 17Ad–22(e)(23).

The commenter further stated that because a CCP's internal models are not usually disclosed at a sufficient level of detail, participants are often unable to predict initial margin requirements, clearing or guaranty fund contributions, or possible loss allocations accurately and, as a result, cannot anticipate exposures or hedge resulting risks.[535] The commenter also stated that participants typically do not have sufficient insight into the stress framework and stress scenarios that are intended to ensure sufficiency of total financial resources and as such are unable to determine the CCP's ability to withstand multiple participants' failures or market stress.[536] As noted above, the disclosure required by policies and procedures under Rule 17Ad–22(e)(23) marks a significant increase in the level and detail of disclosure that a covered clearing agency will be required to provide to its participants and the public and addresses in significant portion the commenter's concerns.

In addition, to promote participants' ability to identify and evaluate their risks, the commenter recommended that the Commission clarify that a covered clearing agency must provide to its participants each fiscal quarter, or at any time upon request, the following minimum information:

- The methodologies for determining initial margin requirements and clearing or guaranty fund contributions, at a level of detail adequate to enable participants to replicate the covered clearing agency's calculations; [537]
- The methodologies for stress testing the adequacy of the clearing or guaranty fund, including the assumptions and scenarios that formed the basis of the stress test and the results of the stress test, which shall include but not be limited to an analysis of the adequacy of the defaulting participant's resources available to cover losses arising from the liquidation, transfer or termination of the positions in its portfolio; [538] and
- The covered clearing agency's treatment and segregation of participant initial margin and clearing or guaranty fund contributions.[539]

In suggesting that such information be required to be disclosed, the commenter suggested that members of CCPs should also be able to accurately predict the fees, margin requirements and guaranty fund contribution requirements associated with participation in the CCP and changes to the member's portfolio or clearing activity.

Where the above disclosure is not possible, the commenter stated that the Commission should instead require a covered clearing agency to develop computational solutions that provide its participants with the ability to determine the costs, initial margin, clearing or guaranty fund contributions, clearing or guaranty fund performance and loss allocations associated with changes to each respective participant's portfolio or hypothetical portfolio, participant defaults and other relevant information.[540] Mandating disclosure of this frequency and granularity would be inconsistent with the principles-based approach the Commission is taking in Rule 17Ad–22(e), and Rule 17Ad–22(e)(23) addresses in significant portion the commenter's concerns.

The commenter also stated that CCPs should be required to provide advance notice to members of any proposed changes to policies, procedures, models, or other elements of the CCPs' operations that could have a material adverse economic effect on members. According to the commenter, such advance notice is necessary to protect members' ability to manage their risk by withdrawal from the CCP if necessary, and further CCPs should seek member input on any such changes through a formal consultation process to the extent possible.[541] The Commission believes that the rule filing process under Section 19(b) of the Exchange Act and Rule 19b–4 thereunder, as well as the process for advance notices under Section 806(e) of the Clearing Supervision Act, address this comment, including by providing the opportunity for member input upon the proposed rule change.

c. Final Rule

The Commission is adopting Rule 17Ad–22(e)(23) with modifications. First, the Commission is striking the language ''maintain clear and comprehensive rules and procedures'' under Rule 17Ad–22(e)(23) because Rule 17Ad–22(e) already requires that a covered clearing agency have written policies and procedures reasonably designed to establish, implement, maintain and enforce the requirements thereunder. Consistent with this change, the Commission is also striking ''providing'' from Rule 17Ad–22(e)(23)(iv). Second, the Commission is modifying paragraph (iv) as described in Part II.C.23.b.i. Third, the Commission is also modifying paragraph (iv)(D) to correct technical errors in the proposed rule text so that it refers to the standards set forth in paragraphs (e)(1) through (23) (rather than (e)(1) through (22)). The Commission believes that providing a summary narrative for Rule 17Ad–22(e)(23) is appropriate because Rule 17Ad–22(e)(23) requires policies and

rules and procedures under Rule 17Ad–22(e)(13)), and II.C.16 (discussing requirements for custody and investment policies under Rule 17Ad–22(e)(16)).

[533] *See supra* Part II.C.23.b.i.

[534] *See* The Clearing House at 15; *see also* Payments Risk Committee, Recommendations for Supporting Participant Due Diligence of Central Counterparties (Feb. 5, 2013).

[535] *See* The Clearing House at 15.

[536] *See id.*

[537] *See* The Clearing House at 16.

[538] *See id.* The commenter stated that stress frameworks mandated by the Commission should form the baseline set of assumptions/scenarios for a covered clearing agency, and those frameworks should be based on sufficiently severe stressed macroeconomic conditions to provide a consistent initial baseline from which covered clearing agencies can begin to estimate the extent of their need for loss-absorbing resources. These baseline assumptions/scenarios should be bolstered by specific scenarios unique to the particular asset class and should include idiosyncratic stresses on basis and higher order risk exposures embedded in the covered clearing agency's portfolio. *See id.* at 16 n.44.

[539] *See* The Clearing House at 16.

[540] *See* The Clearing House at 16.

[541] *See id.*

procedures to (i) publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures; (ii) provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency; and (iii) publicly disclose relevant basic data on transaction volume and values, in addition to requiring the standard-by-standard summary narrative required by Rule 17Ad–22(e)(23)(iv)(D). A summary narrative for Rule 17Ad–22(e)(23) would allow for a better understanding of a covered clearing agency's policies and procedures for compliance with this rule.

Further, because the Commission recognizes that there may be a number of ways to address compliance with Rule 17Ad–22(e)(23), the Commission is providing the following guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address disclosure of rules, key procedures, and market data:

- Whether it adopts clear and comprehensive rules and procedures that are fully disclosed to participants;
- whether it discloses clear descriptions of the system's design and operations, as well as its and participants' rights and obligations, so that participants can assess the risks they would incur by participating in the covered clearing agency;
- whether it provides all necessary and appropriate documentation and training to facilitate participants' understanding of the covered clearing agency's rules and procedures and the risks they face from participating in the covered clearing agency;
- whether it publicly discloses its fees at the level of individual service it offers as well as its policies on any available discounts; and
- whether it completes regularly and discloses publicly responses to the PFMI disclosure framework.

In addition, the Commission notes that, as with public disclosures contemplated in conjunction with Rule 17Ad–22(e)(23), a covered clearing agency could comply with the proposed requirement by posting the relevant documentation to its Web site.

D. Rule 17Ab2–2

1. Proposed Rule

The Commission proposed Rule 17Ab2–2 to establish procedures for the Commission to make determinations affecting covered clearing agencies. Under the proposed rule, the Commission would make determinations in three cases, as discussed below. In each case, under proposed Rule 17Ab2–2(d), the Commission would publish notice of its intention to consider such determinations, together with a brief statement of the grounds under consideration, and provide at least a 30-day public comment period prior to any determination. The Commission may provide the clearing agency subject to the proposed determination opportunity for hearing regarding the proposed determination. Under proposed Rule 17Ab2–2(e), notice of determinations in each case would be given by prompt publication thereof, together with a statement of written reasons supporting the determination. In proposing Rule 17Ab2–2, the Commission noted that determinations could be made as part of the registration process upon receiving an application for registration as a clearing agency or at some point after registration, if the Commission determines that a clearing agency does not meet the definition of a covered clearing agency upon registration but does so at a later date, as either market conditions or the characteristics of the clearing agency itself change.[542]

As proposed, Rule 17Ab2–2 provides the Commission with procedures for making determinations in the following three cases:

- Pursuant to Rule 17Ab2–2(a), the Commission may, if it deems appropriate, upon application by any registered clearing agency or member thereof or on its own initiative, determine whether a registered clearing agency should be considered a covered clearing agency. In determining whether a registered clearing agency should be considered a covered clearing agency, the Commission may consider characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults or other such factors as it deems appropriate in the circumstances.[543]
- Pursuant to Rule 17Ab2–2(b), the Commission may, if it deems appropriate, upon application by any clearing agency or member thereof, or on its own initiative, determine whether a covered clearing agency meets the definition of ''systemically important in multiple jurisdictions.'' In determining whether a covered clearing agency is systemically important in multiple jurisdictions, the Commission may consider (i) whether the covered clearing agency is a designated clearing agency; (ii) whether the clearing agency has been determined to be systemically important by one or more jurisdictions other than the United States through a process that includes consideration of whether the foreseeable effects of a failure or disruption of the designated clearing agency could threaten the stability of each relevant jurisdiction's financial system; [544] or (iii) such other factors as the Commission may deem appropriate in the circumstances. The Commission also noted that analysis of other factors could include whether foreign regulatory authorities have designated the covered clearing agency as systemically important and whether any findings were made in anticipation of that designation.[545]
- Pursuant to Rule 17Ab2–2(c), the Commission may, if it deems appropriate, determine whether any of the activities of a clearing agency providing CCP services, in addition to clearing agencies registered with the Commission for the purpose of clearing security-based swaps, have a more complex risk profile. In determining whether a clearing agency's activity has a more complex risk profile, the Commission may consider (i) characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults; or (ii) such other characteristics as it deems appropriate in the circumstances. [546]

2. Comments Received and Commission Response

The Commission received two comments that generally supported the Commission's approach in Rule 17Ab2–2 [547] However, a number of commenters also raised concerns about particular procedural and substantive aspects of the Rule 17Ab2–2, and the Commission discusses each of these in turn below.

[542] *See* CCA Standards proposing release, *supra* note 5, at 29557–58.

[543] *See id.* at 29558.

[544] The Commission notes that this provision of proposed Rule 17Ab2–2(b) parallels the definition of systemic importance in Section 803(9) of the Clearing Supervision Act, which states that systemic importance means a situation where the failure of or a disruption to the functioning of an FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States. *See* 12 U.S.C. 5462(9).

[545] *See* CCA Standards proposing release, *supra* note 5, at 29558.

[546] *See id.* at 29559.

[547] *See* CFA Institute at 5, 14; OSEC at 2.

a. Determinations Regarding ''Covered Clearing Agency'' Status Generally

One commenter argued that Rule 17Ab2–2 lacks clear standards for determining when and according to which standards a registered clearing agency would be found to be a covered clearing agency, and further stated that such determinations are based upon factors that may be entirely defined by the Commission during the determinations process itself.[548] In response to this comment, and in light of the Commission's separate proposal to amend the definition of ''covered clearing agency,'' [549] the Commission has determined not to adopt Rule 17Ab2–2(a). Because the Commission had determined not to adopt Rule 17Ab2–2(a), the subsequent paragraphs in Rule 17Ab2–2 will be renumbered accordingly.

b. Determinations Regarding ''Covered Clearing Agency'' Status for Dually Registered Entities

In another commenter's view, any decision to apply the enhanced standards for covered clearing agencies should take into account whether, and the extent to which, the clearing agency is already subject to similar or comparable standards under other regulation.[550] The commenter noted that the proposed rules take this approach with respect to dually registered SIDCOs for which the CFTC is the supervisory agency under the Clearing Supervision Act and believed a similar exclusion would be appropriate for clearing agencies subject to other regulatory frameworks.[551] The commenter cited as examples regulation by the Bank of England under existing U.K. legislation and, for those clearing agencies that have been granted authorization as a CCP under EMIR, the regulations under EMIR.[552]

Because the Commission has determined not to adopt Rule 17Ab2–2(a), the commenter's concerns regarding determinations under Rule 17Ab2–2(a) for dually registered clearing agencies have been addressed.

c. Determinations Regarding ''Complex Risk Profile''

One commenter expressed concern about the proposed criteria for determining whether a clearing agency is involved in activities with a more complex risk profile under proposed Rule 17Ab2–2(c), which triggers enhanced requirements for policies and procedures related to credit and liquidity risk management.[553] The commenter believed that it is necessary to consider additional factors, including the proportion of the covered clearing agency's clearing activities involving higher risk products as well as the manner in which it manages those risks. In the absence of considering such additional factors, the commenter expressed concern that a trivial amount of clearing of credit default options, in comparison to more standardized options, could trigger a cover two requirement, when a clearing agency may have other means to address the added risk, such as through an enhanced margin system.[554] The commenter suggested that the Commission clarify that it is not its intention to interpret the rules in such a manner.[555] A second commenter believed that the proposed wording of paragraphs (1) and (2) under proposed Rule 17Ab2–2(c) is vague.[556] The commenter believed it is unclear whether ''characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults'' and ''such other characteristics as it deems appropriate in the circumstances'' are independent analyses by which a clearing agency may be judged or whether they should be considered jointly.

In response to these comments, the Commission is modifying the proposed criteria to be considered in determining whether any of the activities of a clearing agency providing CCP services have a more complex risk profile in Rule 17Ab2–2 to remove the reference to ''[s]uch other characteristics as it may deem appropriate in the circumstances, as factors supporting a finding of a more complex risk profile.'' [557] Further, the Commission notes that it could, as part of its analysis under the rule, also consider the extent to which a clearing agency clears financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults. The Commission believes that this approach mitigates the concern raised by the commenter that a clearing agency clearing only a trivial amount of credit default options could be subject to the ''cover two'' requirement in Rule 17Ad–22(e)(4).

In addition, in light of the concerns regarding the scope of such other characteristics as the Commission may deem appropriate in the circumstances, the Commission is also removing the similar criteria—''such other factors as it may deem appropriate in the circumstances''—from proposed Rule 17Ab2–2(b).[558]

d. Sufficiency of Procedures Generally

One commenter stated that proposed Rule 17Ab2–2 does not provide the subjected clearing agency with an opportunity for a hearing.[559] The commenter further stated that it is not apparent under the proposed framework that a registered clearing agency would be able to meaningfully impact any proceeding in which the Commission seeks to determine that it should be subject to the requirements for covered clearing agencies, exacerbating regulatory uncertainty.[560]

As discussed above, the Commission has determined not to adopt Rule 17Ab2–2(a), and therefore no process would exist under Rule 17Ab2–2 by which the Commission could designate a registered clearing agency as a covered clearing agency. The Commission notes, nonetheless, that the procedures set forth in Rule 17Ab2–2, as previously discussed, include provisions for publishing notice of the Commission's intention to consider determinations under Rule 17Ab2–2, including a brief statement of the grounds under consideration, and for providing at least a 30-day public comment period. The Commission believes that this should provide a clearing agency with ample opportunity to present data, views, and arguments supporting why it should not be subject to the requirements for covered clearing agencies. Nevertheless, the rule also provides that the clearing agency subject to the proposed determination may be provided an opportunity for hearing, which provides the possibility of an opportunity for additional input.

e. Procedures for Removing ''Covered Clearing Agency'' Status

One commenter believed that the Commission should establish a process,

[548] *See* CME at 3.

[549] *See* CCA Definition proposing release, *supra* note 82, at 25–26.

[550] *See* ICEEU at 4–5.

[551] *See id.* at 5.

[552] *See id.*

[553] *See* OCC at 7.

[554] *See id.*

[555] *See id.* at 8.

[556] *See* Joyce.

[557] In addition, as noted in Part II.D.2.a, the Commission has determined not to adopt proposed Rule 17Ab2–2(a). The Commission is therefore renumbering Rule 17Ab2–2 so that proposed Rule 17Ab2–2(c) is being moved to Rule 17Ab2–2(b). *See infra* Part VI.

[558] As discussed in Part II.D.2.a above, the Commission has determined not to adopt proposed Rule 17Ab2–2(a), and therefore, in adopting proposed Rule 17Ab2–2(b), the Commission is moving it to Rule 17Ab2–2(a). *See infra* Part VI.

[559] *See* CME at 3.

[560] *See id.*

including a public comment period, for determinations regarding covered clearing agency status and recommends that a process for removing that status (due to, for example, a change in circumstances such that the clearing agency no longer meets the criteria for designation) also be established. The commenter stated that it should include a public comment period and advance notice to clearing members of at least 180 days prior to the effectiveness of such change in status.[561] The Commission believes that such procedures will ensure that each clearing agency is subject to the appropriate rule set on an ongoing basis. In response to this comment, the Commission is adding new paragraph (d) to Rule 17Ab2–2 to provide for a process to rescind any determination made pursuant to Rule 17Ab2–2(a), (b), or (c). This new rule includes the same procedural elements as for determinations under Rules 17Ab2–2(b) and (c), including publication with a 30-day comment period. The commenter requested that clearing members be provided notice at least 180 days prior to the effectiveness of a change in status. The Commission believes that the effective date for any such determination should be based on the facts and circumstances of the clearing agency for which removal of covered clearing agency status is being considered.

3. Final Rule

The Commission has determined not to adopt proposed Rule 17Ab2–2(a), as discussed above. The Commission is adopting proposed Rules 17Ab2–2(b) through (g) with the modifications described above. Because the Commission is not adopting proposed Rule 17Ab2–2(a), the Commission is renumbering the remaining paragraphs under Rule 17Ab2–2 accordingly.

E. Rule 17Ad–22(f)

As proposed, Rule 17Ad–22(f) would codify the Commission's special enforcement authority over designated clearing agencies for which the Commission acts as the supervisory agency, pursuant to the Clearing Supervision Act. Under Section 807(c) of the Clearing Supervision Act, for purposes of enforcing the provisions of the Clearing Supervision Act, a designated clearing agency is subject to, and the Commission has authority under, the provisions of subsections (b) through (n) of Section 8 of the Federal Deposit Insurance Act in the same manner and to the same extent as if a designated clearing agency were an insured depository institution and the Commission were the appropriate Federal banking agency for such insured depository institution.[562] The Commission received no comments regarding the proposed rule and is adopting Rule 17Ad–22(f) as proposed.

F. Amendment to Rule 17Ad–22(d)

To facilitate consistency between existing Rule 17Ad–22(d) and proposed Rule 17Ad–22(e), the Commission proposed to amend the first paragraph of Rule 17Ad–22(d) so that it would not apply to covered clearing agencies. Rule 17Ad–22(d) provides that a registered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to fulfill the requirements of Rules 17Ad–22(d)(1) through (15), as applicable. As proposed, the amended Rule 17Ad–22(d) would instead apply only to a registered clearing agency other than a covered clearing agency.

The Commission received general comments regarding the overall structure and application of Rule 17Ad–22 in light of proposed Rule 17Ad–22(e) and the existing requirements under Rule 17Ad–22(d), and has addressed those comments in Part I.C.2. The Commission did not receive any comments addressed to the proposed amendment to the first paragraph of Rule 17Ad–22(d), and the Commission is adopting the amendment as proposed.

G. Effective and Compliance Dates

One commenter believed that a phase-in of Rule 17Ad–22(e) is necessary and appropriate.[563] The commenter suggested that the implementation phase-in extend to at least one year following publication of Rule 17Ad–22(e), citing in particular the requirements related to linkages in Rule 17Ad–22(e)(20) and views that compliance with such rules will require extensive cooperation and coordination among the relevant entities.[564] Another commenter specifically requested sufficient time for covered clearing agencies to implement the requirements with respect to equity capital funding pursuant to proposed Rule 17Ad–22(e)(15).[565]

The amendments to Rule 17Ad–22 and new Rule 17Ab2–2 will become effective 60 days after publication in the **Federal Register** (''effective date''). As proposed, a covered clearing agency would have been required to meet the requirements of Rule 17Ad–22(e) on the effective date. However, after consideration of the views of the commenters, the Commission has determined to adopt a compliance date of 120 days after the effective date (''compliance date''). The Commission believes it is important to establish enhanced requirements for covered clearing agencies given the potentially significant risks posed by their size, systemic importance, global reach, and/or the risks inherent in the products they clear, and therefore continues to believe that implementation of the requirements in Rule 17Ad–22(e) should be prompt. The Commission notes that one commenter requesting a phase-in approach for Rule 17Ad–22(e)(15) stated it would be in compliance with the proposed requirements no later than January 1, 2015,[566] which has already passed. The other commenter raised several concerns regarding the need to review existing policies and procedures, develop and draft new policies and procedures, submit, where appropriate, proposed rule changes and advance notices for Commission review, raise additional capital or qualifying liquid resources, and hire and train additional personnel.[567] The Commission believes that the additional time it is providing with the compliance date of 120 days after the effective date addresses this concern.

In addition, one commenter requested that the Commission clarify how it intends to apply the rules to applications for registration as a clearing agency that are pending when the rules are finalized.[568] The Commission intends to review any application for registration as a clearing agency pursuant to the requirements of Section 17A of the Exchange Act and the rules and regulations thereunder, including Rule 17Ad–22 and any amendments thereto, and notes that the compliance date would apply to all covered clearing agencies, including an applicant for registration as a clearing agency whose application is pending upon the compliance date that would, if registered, meet the definition of a

[561] *See* ISDA at 2.

[562] *See* 12 U.S.C. 5466(c); *see also* 12 U.S.C. 1818 (relevant provisions under the Federal Deposit Insurance Act).

[563] *See* DTCC at 13.

[564] *See id.* at 13–14 & n.46.

[565] *See* OCC at 15. The Commission has since issued an order approving a proposed rule change by OCC concerning a proposed capital plan. *See* Exchange Act Release No. 34–74452 (Mar. 6, 2015), 80 FR 13058 (Mar. 12, 2015) (order approving proposed rule change by OCC concerning a proposed capital plan for raising additional capital that would support its function as a SIFMU).

[566] *See supra* note 565.

[567] *See* DTCC at 14.

[568] *See* LCH at 3.

covered clearing agency. In reviewing such an application, Section 17A(b)(3) of the Exchange Act requires that a clearing agency shall not be registered unless the Commission determines that an applicant's rules and operations satisfy each of the requirements set forth in Section 17A(b)(3).[569] Following registration, any registered clearing agency that falls within the definition of a covered clearing agency would need to address compliance with each of the requirements in Rule 17Ad–22(e) no later than the compliance date.

The Commission also notes that the staff regularly conducts examinations, including those required under Section 807 of the Clearing Supervision Act,[570] and supervisory reviews of registered clearing agencies that are covered clearing agencies.[571] Accordingly, the staff will periodically evaluate the results of these reviews and examinations of covered clearing agencies to evaluate the extent to which covered clearing agencies have achieved and maintained compliance with Rule 17Ad–22(e); the various outcomes observed in how the covered clearing agencies seek to implement the requirements of Rule 17Ad–22(e), and possible reasons for such variations; and any other observations relevant to implementation of Rule 17Ad–22(e).

III. Economic Analysis

As noted above, registered clearing agencies have become an essential part of the infrastructure of the U.S. securities markets. Many securities transactions are centrally cleared by clearing agencies, and central clearing has become more prevalent in the market for security-based swaps.[572] For example, in the cash markets, DTCC processed $1.508 quadrillion in financial transactions in 2015. Within DTCC, NSCC processed an average daily value of $976.6 billion in equity securities, FICC cleared $917.1 trillion of transactions in government securities and $48.2 trillion of transactions in agency mortgage-backed securities, and DTC settled $112.3 trillion of securities and held securities valued at $45.4 trillion.[573] In the listed options markets, OCC cleared more than 4.1 billion contracts and held margin of $98.3 billion at the end of 2015.[574]

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. 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.[575] As a result, proper management 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. The mandate in Title VII of the Dodd-Frank Act for central clearing of security-based swaps, wherever possible and appropriate, further reinforces this need.[576] When a clearing agency provides CCP services, central clearing replaces bilateral counterparty exposures with exposures against the clearing agency. Consequently, a move from voluntary clearing to mandatory clearing of security-based swaps, holding the volume of security-based swap transactions constant, would increase 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.

Clearing agencies have incentives to implement a risk management framework that can effectively manage the risks posed by central clearing. First, the ongoing viability of a clearing agency depends on its reputation and the confidence that market participants have in its services. Clearing agencies therefore have an incentive to reduce the likelihood that a member default or operational outage would disrupt settlement of a particular transaction or set of transactions. Second, some clearing agencies operate as member-owned utilities and mutualize default risk across their members, and thus non-defaulting participants are subject to losses that occur above the defaulter's margin and clearing fund. Clearing agencies that operate under such models thus have an economic interest in sound risk management to reduce the expected level of losses that must be mutualized. Other clearing agencies are publicly traded and therefore could have different incentives because non-member-owners may have a lower economic stake in the clearing agency than member-owners under a mutualized structure. Such an ownership structure could increase the incentive for owners, particularly those that are non-members, to take risks, though these incentives may be tempered by rules of the clearing agency

[569] *See* 15 U.S.C. 78q–1(b)(3).

[570] Section 807 annual examinations of designated clearing agencies are conducted in order to determine: (1) The nature of the operations of, and the risks borne by, the designated financial market utility; (2) the financial and operational risks presented by the designated market utility to financial institutions, critical markets, or the broader financial system; (3) the resources and capabilities of the designated financial market utility to monitor and control such risks; (4) the safety and soundness of the designated financial market utility; and (5) the designated financial market utility's compliance with the Clearing Supervision Act and the rules and orders prescribed under the Clearing Supervision Act. *See* 12 U.S.C. 5466(a).

[571] *See supra* Part I.A.1.

[572] The Commission is using ''central clearing'' here and below to refer to both the clearance and settlement of securities transactions. In this regard, ''clearing'' is performed by a CCP, and ''settlement'' is performed for certain securities transactions by a CSD, which then holds those securities in its role as the central depository. Because clearing agencies can provide either CCP or CSD services, the Commission uses ''clearing agencies'' here and below to refer to CCPs and CSDs collectively. ''Registered clearing agencies'' are those CCPs and CSDs that are registered with the Commission.

[573] *See* DTCC, 2015 Annual Report, *available at http://www.dtcc.com/annuals/2015/index.php.*

[574] *See* OCC, 2015 Annual Report, *available at http://www.theocc.com/components/docs/about/annual-reports/occ-2015-annual-report.pdf.*

[575] *See generally* Dietrich Domanski, Leonardo Gambacorta, and Cristina Picillo, Central Clearing: Trends and Current Issues, BIS Quarterly Review (Dec. 2015), *available at 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, at 9 (Fed. Reserve Bank N.Y. Staff Reps., Mar. 2010), *available at 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.''); Pirrong, The Inefficiency of Clearing Mandates, Policy Analysis, No. 655, at 11–14, 16–17, 24–26 (2010), *available at http://www.cato.org/pubs/pas/PA665.pdf*, at 11–14, 16–17, 24–26 (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 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, Jan. 2015), available at *http://papers.ssrn.com/sol3/Delivery.cfm/wp1521.pdf* (assessing the potential channels for contagion arising from CCP interconnectedness); Manmohan Singh, Making OTC Derivatives Safe—A Fresh Look, at 5–11 (IMF Working Paper, Mar. 2011), *available at 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).

[576] *See supra* Part I.A.2.

that are consistent with Section 17A(b)(3)(C) of the Exchange Act, which requires that the clearing agency's rules assure fair representation of its shareholders and participants in the selection of the clearing agency's directors and administration of its affairs.[577]

Further, Section 17A of the Exchange Act requires that the rules of a clearing agency protect investors and the public interest.[578] Nevertheless, incentives for sound risk management may be tempered by pressures to reduce costs and maximize profits that are distinct from goals set forth in governing statutes.[579] This tension may result in a clearing agency making decisions that result in tradeoffs between the costs and benefits of risk management that are not socially efficient because a clearing agency's decision-making process may not fully reflect the costs and benefits that accrue to other financial market participants as a result of its decisions. Further, even if clearing agencies do internalize costs that they impose on their clearing members, they may fail to internalize the consequences of their risk management decisions on other entities within the financial system that are connected to them through relationships with their clearing members.[580] Such a failure represents a financial network externality imposed by clearing agencies on the broader financial system and suggests that financial stability, as a public good, may be under-produced in equilibrium.

As discussed in more detail below, the amendments to Rule 17Ad–22 and Rule 17Ab2–2 represent a strengthening of the Commission's regulation of registered clearing agencies. In particular, Rule 17Ad–22(e) establishes requirements for the operation and governance of registered clearing agencies that meet the definition of ''covered clearing agency.'' The Commission believes that the more specific requirements imposed by Rule 17Ad–22(e) will further mitigate the potential for moral hazard associated with risk management at a covered clearing agency. For instance, in the absence of policies and procedures that require periodic stress-testing and validation of credit and liquidity risk models, a covered clearing agency could potentially choose to recalibrate models in periods of low volatility and avoid recalibration in periods of high volatility, causing it to underestimate the risks that it faces during periods of market stress. The Commission believes that the specific requirements in Rule 17Ad–22(e) with respect to stress testing and validation of credit and liquidity models would be more effective at mitigating these particular manifestations of incentive misalignments than the requirements in Rules 17Ad–22(b) or (d).

The Commission believes, as a result, that Rule 17Ad–22(e) provides a general benefit of reducing the likelihood of a clearing agency failure. This general benefit accrues to the extent that clearing agencies do not already conform to the requirements in Rule 17Ad–22(e). Despite the potential incentive problems noted above, and perhaps in anticipation of regulatory efforts, some registered clearing agencies have already taken steps to update their policies and procedures in manners that may be consistent with the requirements in Rule 17Ad–22(e). The Commission also notes that, in some instances, the practices that Rule 17Ad–22(e) codifies as minimum requirements are current practices at some registered clearing agencies. In these cases, the Commission believes that imposing these requirements on covered clearing agencies will have the effect of imposing consistent, higher minimum risk management standards across all covered clearing agencies. In adopting these rules, the Commission is also mindful of the benefits that would accrue by adopting regulatory approaches that are generally consistent with those of the CFTC and FRB.

The Commission is sensitive to the economic consequences and effects of the amendments to Rule 17Ad–22 and Rule 17Ab2–2, including their benefits and costs. The Commission acknowledges that, since many of these rules require a covered clearing agency to adopt new policies and procedures, the economic effects and consequences of these rules include those flowing from the substantive results of those new policies and procedures. 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, competition, and capital formation.[581] Further, as noted above, Section 17A of the Exchange Act directs the Commission 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 when using its authority to facilitate the establishment of a national system for clearance and settlement transactions in securities.[582] 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.[583]

The Commission has attempted to quantify the benefits and costs anticipated to flow from the amendments to Rule 17Ad–22 and Rule 17Ab2–2. In the CCA Standards proposing release, the Commission requested comment on all aspects of the economic analysis of the proposed rules, including their benefits and costs, as well as any effect the proposed rules may have on competition, efficiency, and capital formation, and encouraged commenters to provide data and analysis to help further quantify or estimate the potential benefits and costs of the proposed rules. Although it did not receive comments specifically directed at the economic analysis, the Commission has considered the comments, and, as in some cases indicated below, certain data needed to quantify the costs and benefits associated with the rules remains unavailable. For example, implementing policies and procedures that require stress testing of financial resources available to a covered clearing agency at least once each day may require additional investment in infrastructure, but the particular infrastructure requirements will depend on existing systems and a covered clearing agency's choice of modeling techniques.

As discussed above,[584] the Commission believes that Rule 17Ad–22(e), in requiring reasonably designed policies and procedures strikes an appropriate balance between directing covered clearing agencies to engage in specific conduct or practices and allowing each covered clearing agency to design its own policies and procedures without any framework. In adopting Rule 17Ad–22(e), the Commission is providing guidance to help covered clearing agencies identify and develop reasonable policies and

[577] *See* 15 U.S.C. 78q–1(b)(3)(C).

[578] *See* 15 U.S.C. 78q–1(b)(3)(F).

[579] *See supra* Parts I.A.1 and 2 (describing the requirements under the Exchange Act and the Clearing Supervision Act).

[580] *See* Daron Acemoglu, Asuman Ozdaglar & Alireza Tahbaz-Salehi, Systemic Risk and Stability in Financial Networks (NBER Working Paper No. 18727, Jan. 2013), *available at http://www.nber.org/papers/w18727*.

[581] *See* 15 U.S.C. 78c(f).

[582] *See supra* Part I.A.1.

[583] *See* 15 U.S.C. 78w(a)(2).

[584] *See* Part II.B.

procedures. The guidance outlines key issues and building blocks that a covered clearing agency generally should consider as it develops policies and procedures in compliance with Rule 17Ad–22(e). While this guidance provides covered clearing agencies with additional information about the types of considerations that may be relevant to meeting requirements under Rule 17Ad–22(e), the Commission does not believe that considering these issues will entail substantial costs beyond the estimates presented below.

Overall, the Commission believes that the amendments to Rule 17Ad–22 and Rule 17Ab2–2 should result in improvements in risk management with respect to systemic risk, as well as with respect to legal, credit, liquidity, general business, custody, investment, and operational risk. Further, the Commission believes that the amendments to Rule 17Ad–22 should result in an increase in financial stability insofar as they result in minimum standards at covered clearing agencies that are higher than those standards implied by current practices at covered clearing agencies. In particular cases, such as requirements for the management of liquidity risk and general business risk, an increase in financial stability may occur as a result of higher risk management standards at covered clearing agencies that lower the probability that either covered clearing agencies or their members default. As explained in Part III.B.2, reduced default probabilities for covered clearing agencies may, in turn, improve efficiency and capital formation.

A. Economic Baseline

To consider the effect of the amendments to Rule 17Ad–22 and Rule 17Ab2–2 on market activity, including possible effects on efficiency, competition, and capital formation, the Commission is using an economic baseline that considers the current market for central clearing, including the number of registered clearing agencies, the distribution of members across these clearing agencies, and the volume of transactions these clearing agencies process. As noted above, there are currently five registered clearing agencies that provide CCP services and one that provides CSD services, and these entities processed and cleared a large number of contracts and securities. For example, for 2015 DTCC reported processing over $1.5 quadrillion in financial market transactions, DTCC cleared over 4.1 billion in contract volume, and ICE cleared over 6 million futures and OTC contracts each day.[585]

With respect to the distribution of members across clearing agencies, Table 1 shows that membership rates vary.

TABLE 1—MEMBERSHIP STATISTICS FOR REGISTERED CLEARING AGENCIES[586]

		Number
DTC	Full Service Members.	255
FICC	GSD Members	106
	MBSD Members	77
ICE	Clear Credit Members.	30
	Clear Europe Members.	80
	—Clear Europe Members that clear CDS.	21
NSCC ..	Full Service Members.	163
OCC	Total Members	114

The Commission notes that registered clearing agencies are currently characterized by specialization and limited competition. Central clearing exhibits high barriers to entry and economies of scale. These features of the existing market, and the resulting concentration of central clearing within a handful of entities, informs the Commission's examination of the effects of the amendments to Rule 17Ad–22 and Rule 17Ab2–2 on competition, efficiency, and capital formation, as discussed further below.[587]

To further assess the economic effects of the amendments to Rule 17Ad–22 and Rule 17Ab2–2, including possible effects on efficiency, competition, and capital formation, the Commission is also considering as part of the baseline (i) the current regulatory framework for registered clearing agencies, and (ii) the current practices of registered clearing agencies that relate to Rule 17Ad–22(e). Each is discussed further below.

1. Regulatory Framework for Registered Clearing Agencies

As previously discussed, the current regulatory framework for registered clearing agencies begins with Section 17A of the Exchange Act, which directs the Commission to facilitate the establishment of (i) a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) linked or coordinated facilities for clearance and settlement of securities transactions. Further, Section 17A and Rule 17Ab2–1 require an entity that meets the definition of a clearing agency to register with the Commission or obtain from the Commission an exemption from registration prior to performing the functions of a clearing agency.[588] After registration, the Commission supervises registered clearing agencies using various tools, including (i) the rule filing process for SROs set forth in Section 19(b) of the Exchange Act and rules thereunder, (ii) examinations of clearing agencies, and (iii) other provisions of the Exchange Act.[589] Titles VII and VIII of the Dodd-Frank Act have expanded the Commission's role with respect to the regulation of clearing agencies. Specifically, Title VII amended Section 17A of the Exchange Act by adding, among other provisions, new paragraphs (g) through (j), which provide the Commission with authority to adopt rules governing security-based swap clearing agencies.[590] The Clearing Supervision Act, adopted in Title VIII, provides for enhanced regulation of SIFMUs and, more generally, for enhanced coordination between the Commission and FRB by facilitating regulator on-site examinations and information sharing. It further provides that the Commission and CFTC shall coordinate with the FRB to jointly develop risk management supervision programs for SIFMUs and that the Commission and CFTC can each prescribe risk management standards governing the operations related to the PCS activities of SIFMUs for which each is the supervisory agency, in consultation with the FSOC and FRB and taking into consideration relevant international standards and existing prudential requirements.[591]

In 2012, the Commission adopted Rule 17Ad–22 under the Exchange Act to strengthen the substantive regulation

[585] *See supra* notes 573–574 and accompanying text.

[586] Membership statistics are taken from the Web sites of each of the listed clearing agencies as of March 2016. *See* DTCC, DTC Member Directories, *available at http://www.dtcc.com/client-center/dtc-directories*; DTCC, FICC–GOV Member Directories, *available at http://www.dtcc.com/client-center/ficc-gov-directories*; DTCC, FICC–MBS Member Directories, *available at http://www.dtcc.com/client-center/ficc-mbs-directories*; DTCC, NSCC Member Directories, *available at http://www.dtcc.com/client-center/nscc-directories*; ICE, ICE Clear Credit Participants, *available at https://www.theice.com/clear-credit/participants*; ICE, ICE Clear Europe Membership, *available at https://www.theice.com/clear-europe/membership*; OCC, Member Directory, *http://www.optionsclearing.com/membership/member-information.*

[587] *See infra* Part III.B.2 (discussing the effect of the adopted rules on competition, efficiency, and capital formation).

[588] *See supra* Part I.A.1.

[589] *See supra* notes 11–16 and accompanying text.

[590] *See supra* note 17 and accompanying text.

[591] *See supra* notes 18–25 and accompanying text.

of registered clearing agencies, promote the safe and reliable operation of registered clearing agencies, and improve efficiency, transparency, and access to registered clearing agencies.[592] In its economic analysis of the Clearing Agency Standards release, the Commission noted that the economic characteristics of clearing agencies, including economies of scale, barriers to entry, and the particulars of their legal mandates, may limit competition and confer market power on such clearing agencies, which may lead to lower levels of service, higher prices, or under-investment in risk management systems.[593] The requirements in Rule 17Ad–22 establish an enhanced regulatory framework for clearing agencies that raise systemic risk concerns due to, among other things, their size, systemic importance, global reach, or the risks inherent in the products they clear.[594]

a. Determinations by the Commission

Among other things, the Commission makes determinations regarding the registration of clearing agencies and proposed rule changes. Rule 17Ad–22(d) has applied to registered clearing agencies since January 2013, and no mechanism exists under Rule 17Ad–22 for the Commission to make determinations of the type that appear in Rule 17Ab2–2.[595]

b. BCBS Capital Framework

In addition to requirements under the Exchange Act, the Dodd-Frank Act, and Rule 17Ad–22, other regulatory efforts are relevant to the Commission's analysis of the economic effects of Rule 17Ad–22(e). In 2012, the BCBS first published the capital framework, which sets forth rules governing the capital charges arising from bank exposures to CCPs related to OTC derivatives, exchange-traded derivatives, and securities financing transactions, and the BCBS finalized the framework in 2014.[596] The BCBS capital framework is designed to create incentives for banks to clear derivatives and securities financing transactions with CCPs licensed in a jurisdiction where the relevant regulator has adopted rules or regulations consistent with the PFMI. Specifically, the BCBS capital framework introduces new capital charges based on counterparty risk for banks conducting derivatives transactions or securities financing transactions through a CCP.[597]

Capital charges under the BCBS capital framework relate to a bank's trade exposure and default fund exposure to a CCP and are a function of multiplying these exposures by a corresponding risk weight. Historically, these exposures have carried a risk weight of zero. These weights have increased as banking regulators have adopted rules consistent with the BCBS capital framework. The risk weight assigned under the BCBS capital framework varies depending on whether the counterparty is a QCCP. For example, risk weights for trade exposures to a CCP generally would vary between twenty and 100 percent depending on the CCP's credit quality, while trade exposures to a QCCP would carry only a two-percent risk weight.[598] In addition, bank exposures to CCP default funds would carry a risk weight of 1250 percent. While bank exposures to QCCP default funds will also carry a 1250 percent risk weight at low levels, under the BCBS capital framework, default fund exposures' contribution to a bank's risk weighted assets will be limited to at most eighteen percent of the bank's trade exposures to a given QCCP.

Many jurisdictions have already adopted rules that implement requirements under the BCBS capital framework. For example, the BCBS reports that, as of March 2016, all twenty-seven member jurisdictions have risk-based capital rules in force, twenty-four have rules for countercyclical capital buffers, and twenty-three have implemented or drafted rules related to systematically important banks.[599] In the United States, the FRB and Office of the Comptroller of the Currency jointly issued regulatory capital rules for U.S. banks consistent with the BCBS capital framework effective January 1, 2014. The rules subject bank exposures to CCPs and QCCPs to increased risk weights as specified in the BCBS capital framework.[600] In addition to specifying risk weights, the rules define the term QCCP for banks supervised by the FRB and the Office of the Comptroller of the Currency. According to these rules, QCCP status applies to any CCP that is a SIFMU or, if not located in the United States, any CCP that is regulated and supervised in a manner equivalent to a SIFMU.[601] In addition, a CCP can become a QCCP if it meets the following standards: It requires all parties to contracts cleared by the CCP to be fully collateralized on a daily basis; and it is regulated by the FRB and demonstrates to the satisfaction of the FRB that the CCP is (i) in sound financial condition, (ii) subject to supervision by the Commission, CFTC, or FRB or, if not located in the United States, subject to effective oversight by a national supervisory authority in its home country, and (iii) meets or exceeds the risk management standards for CCPs established under the Dodd-Frank Act or, if not located in the United States, meets or exceeds similar risk-management standards established under the law of its home country that are consistent with international standards for CCP risk management as established by the relevant standard setting body. Under this definition, each covered clearing agency would be a QCCP either because it is a SIFMU or because it is a CCP that is regulated and supervised in a manner equivalent to a SIFMU, and therefore U.S. bank clearing members would be subject to the lower capital requirements on exposures to QCCPs under the BCBS capital framework.

Within the European Union, EMIR permits legal persons incorporated under the law of an EU member state to use non-EU CCPs only if those CCPs have been recognized under EMIR. Further, only non-EU CCPs recognized under EMIR will meet the conditions necessary to be considered a QCCP for EU bank clearing members. Article 25 of EMIR outlines a recognition procedure for non-EU CCPs and Article 89 provides a timeline for recognition.[602] FICC, NSCC, and OCC have applied for recognition under EMIR.[603] In February

[592] *See supra* note 26 and accompanying text.

[593] *See* CCA Standards proposing release, *supra* note 5, at 29579.

[594] *See supra* note 29 and accompanying text.

[595] *See supra* Part II.D.

[596] *See supra* note 44 and accompanying text.

[597] Since the BCBS capital framework applies lower capital requirements only to bank exposures related to OTC and exchange-traded derivatives activity and securities financing transactions, the Commission currently expects that, among all registered clearing agencies, FICC, ICEEU, and OCC would be those affected by the BCBS capital framework. Each would meet the definition of ''covered clearing agency.''

[598] 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 of two or four percent to indirect exposures of banks to QCCPs. *See* BCBS capital framework, *supra* note 44, paras. 114–15; Regulatory Capital Rules, *supra* note 45, at 62103.

[599] *See* BCBS, Tenth progress report on adoption of the Basel regulatory framework, at 1 (Apr. 2016), *available at https://www.bis.org/bcbs/publ/d354.pdf.*

[600] *See* 12 CFR 217.2 (defining ''qualifying central counterparty''); *see also* Regulatory Capital Rules, *supra* note 45, at 62166.

[601] *See* 12 CFR 217.2.

[602] *See* Eur. Comm'n, Practical Implementation of the EMIR Framework to Non-EU Central Counterparties (CCPs) (May 13, 2013), *available at http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/130513_equivalence-procedure_en.pdf.*

[603] These three clearing agencies agreed to have their names publicly disclosed and do not necessarily represent the full set of registered

2016, the European Commission and CFTC announced that they will follow a common approach for CCPs. The European Commission plans to adopt an equivalence decision that will allow ESMA to recognize U.S. CCPs regulated by the CFTC, such that these entities can provide services in the EU while complying primarily with CFTC rules and regulations.[604]

Additionally, the BCBS capital framework, as adopted by the FRB, Office of the Comptroller of the Currency, and banking regulators in other jurisdictions, impose capital requirements related to unconditionally cancellable commitments and other off-balance sheet exposures. For example, the FRB and Office of the Comptroller of the Currency require banks to include ten percent of the notional amount of unconditionally cancellable commitments in their calculation of total leverage exposure.[605] The rules place a floor of three percent on the ratio of tier one capital to total assets for banks subject to advanced approaches to risk-based capital rules.[606] To the extent that clearing agencies rely on financial resources from banks as part of their risk management activities, these constraints on off-balance sheet exposures could raise the cost of such activities.

c. Other Regulatory Efforts

Efforts by the CFTC and FRB to adopt rules that are consistent with the PFMI are also relevant to the economic analysis of the amendments to Rule 17Ad–22. Both the CFTC and FRB have indicated publicly that they have completed all measures necessary to incorporate fully the PFMI into their regulatory frameworks.[607]

2. Current Practices

Current industry practices are a critical element of the economic baseline for registered clearing agencies. Registered clearing agencies must operate in compliance with Rule 17Ad–22, though they may vary in the particular ways they achieve such compliance. Some variation in practices across registered clearing agencies derives from the products they clear and the markets they serve. The Commission also understands that, since it published the CCA Standards proposing release, some registered clearing agencies have amended their rules with the aim of achieving consistency with some of the standards in the PFMI. Because the Commission believes that the requirements in Rule 17Ad–22(e) are consistent with the PFMI and further the objectives of Section 17A of the Exchange Act, the Clearing Supervision Act, and Title VII of the Dodd-Frank Act, the Commission also believes that Rule 17Ad–22(e) represents, where it imposes higher minimum standards on covered clearing agencies, an additional step towards improved risk management.

An overview of current practices is set forth below and includes discussion of covered clearing agency policies and procedures regarding general organization and risk management, including the management of legal, credit, liquidity, business, custody, investment, and operational risk. This discussion is based on the Commission's general understanding of current practices as of the date of this adoption and reflects the Commission's experience supervising registered clearing agencies.

a. Legal Risk

Legal risk is the risk that a registered clearing agency's rules, policies, or procedures may not be enforceable and concerns, among other things, its contracts, the rights of members, netting arrangements, discharge of obligations, and settlement finality. Cross-border activities of a registered clearing agency may also present elements of legal risk.

Rule 17Ad–22(d)(1) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.[608] Each registered clearing agency makes a large portion of these policies and procedures available to members and participants. In addition, each also publishes their rule books and other key procedures publicly to promote the transparency of their legal frameworks.[609]

b. Governance

Rule 17Ad–22(d)(8) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.[610] Important elements of a registered clearing agency's governance arrangements include its ownership structure; its charter, bylaws, and charters for committees of its board and management committees; its rules, policies, and procedures; the composition and role of its board, including the structure and role of board committees; reporting lines between management and the board; and the processes that provide for management accountability with respect to the registered clearing agency's performance.

Each registered clearing agency has a board that governs its operations and supervises senior management. Each registered clearing agency also has an independent audit committee of the board and has established a board committee or committee of members tasked with overseeing the clearing agency's risk management functions. The boards of registered clearing agencies that would be subject to Rule 17Ad–22(e) as covered clearing agencies currently include non-management members.

Since the Commission proposed Rule 17Ad–22(e), certain registered clearing agencies have revised their governance policies. For example, some clearing agencies have established additional committees of the board to focus on risk management and technology issues,[611] and one clearing agency has modified its nomination process for directors and increased the number of public directors on its board of directors.[612]

clearing agencies that applied for recognition under EMIR. *See* ESMA, List of CCPs Established in Non-EEA Countries Which Have Applied for Recognition Under Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, CCPs and TRs (EMIR) (Dec. 16, 2013), *available at https://www.esma.europa.eu/sites/default/files/library/list_of_applicants_tc-ccps.pdf.*

[604] *See* ESMA, ESMA resumes U.S. CCP recognition process following EU–U.S. agreement *available at https://www.esma.europa.eu/sites/default/files/library/2016-278_eu-us_approach_ccp_equivalence.pdf.*

[605] *See* Regulatory Capital Rules, *supra* note 45, at 62169.

[606] *See id.* at 62284. The Regulatory Capital Rules require compliance no later than 2018.

[607] *See supra* note 43.

[608] *See* 17 CFR 240.17Ad–22(d)(1); CCA Standards proposing release, *supra* note 5, at 29580.

[609] The rule book of each registered clearing agency, as well as select policies and procedures, are publicly available on each registered clearing agency's Web site.

[610] *See* 17 CFR 240.17Ad–22(d)(8); *see also* CCA Standards proposing release, *supra* note 5, at 29581.

[611] *See, e.g.,* Exchange Act Release No. 34–77042 (Feb. 3, 2016), 81 FR 6915 (Feb. 9, 2016) (order approving the adoption by OCC of a charter of a new committee of the board of directors, the technology committee); Exchange Act Release No. 34–74026 (Jan. 9, 2015), 80 FR 2160 (Jan. 15, 2015) (order approving proposed rule change related to ICE Clear Europe's board risk committee).

[612] *See* Exchange Act Release No. 34–72564 (July 8, 2014), 79 FR 40824 (July 14, 2014) (order approving a proposed rule change by OCC

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c. Framework for the Comprehensive Management of Risks

Rules 17Ad–22(b) and (d) require registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure and mitigate credit exposures, identify operational risks, evaluate risks arising in connection with cross-border and domestic links for the purpose of clearing or settling trades, achieve DVP settlement, and implement risk controls to cover the clearing agency's credit exposures to participants.[613] Rule 17Ad–22(d)(4) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish business continuity plans setting forth procedures for the recovery of operations in the event of a disruption.[614] Rule 17Ad–22(d)(11) further requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.[615]

In addition to meeting these requirements, the Commission understands that registered clearing agencies also specify actions to be taken when their resources are insufficient to cover their losses.[616] These actions may include assessment rights on clearing members, forced allocation, and contract termination. Since the Commission proposed Rule 17Ad–22(e), certain clearing agencies have modified policies and procedures that address how resources are collected from members to manage financial risks. For example, one clearing agency has revised its rules to require that intraday margin be collected and margin assets not withdrawn when a member's reasonably anticipated settlement obligations would exceed the liquidity resources available to the clearing agency to satisfy those clearing obligations.[617]

d. Financial Risk Management

Registered clearing agencies that provide CCP services have a variety of options available to mitigate the financial risks to which they are exposed. While the manner in which a CCP chooses to mitigate these financial risks depends on the precise nature of the CCP's obligations, a common set of procedures have been implemented by many CCPs to manage credit and liquidity risks. Broadly, these procedures enable CCPs to manage their risks by reducing the likelihood of member defaults, limiting potential losses and liquidity pressure in the event of a member default, implementing mechanisms that allocate losses across members, and providing adequate resources to cover losses and meet payment obligations as required.

Registered clearing agencies that provide CCP services must be able to effectively measure their credit exposures to properly manage those exposures. A CCP faces the risk that its exposure to a member can change as a result of a change in prices, positions, or both. CCPs can ascertain current credit exposures to each member by, in some cases, marking each member's outstanding contracts to current market prices and, to the extent permitted by their rules and supported by law, by netting any gains against any losses. Rule 17Ad–22 includes certain requirements related to financial risk management by CCPs, including requirements to measure credit exposures to members and to use margin requirements to limit these exposures. These requirements are general in nature and provide registered clearing agencies flexibility to measure credit risk and set margin. Within the bounds of Rule 17Ad–22, CCPs may employ models and choose parameters that they conclude are appropriate to the markets they serve.

The current practices of registered clearing agencies that provide CCP services generally include the following procedures: (1) Measuring credit exposures at least once a day; (2) setting margin coverage at a 99% confidence level over some set period; (3) using risk-based models; (4) establishing a fund that mutualizes losses of defaults by one or more participants that exceed margin coverage; (5) maintaining sufficient financial resources to withstand the default of at least the largest participant family; and (6) in the case of security-based swap transactions, maintaining enough financial resources to be able to withstand the default of their two largest participant families.[618]

i. Credit Risk

Rule 17Ad–22(b)(1) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure their credit exposures at least once per day.[619] Several CCPs have policies and procedures designed to require measuring credit exposures multiple times per day.

Rule 17Ad–22(b)(3) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions.[620] It further requires CCPs for security-based swaps to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources sufficient to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, in its capacity as a CCP for security-based swaps.[621] Accordingly, the Commission notes that Rule 17Ad–22(b)(3) imposes a ''cover two'' requirement on CCPs for security-based swaps to protect such CCPs from the

concerning the consolidation of the governance committee and nominating committee into a single committee, changes to the nominating process for directors, and increasing the number of public directors on board of directors).

[613] *See* 17 CFR 240.17Ad–22(b) and (d); *see also* Clearing Agency Standards adopting release, *supra* note 5.

[614] *See* 17 CFR 240.17Ad–22(d)(4); *see also* Clearing Agency Standards adopting release, *supra* note 5, at 66248–49.

[615] *See* 17 CFR 240.17Ad–22(d)(11).

[616] *See* David Elliot, Central Counterparty Loss-Allocation Rules, at tbl. 1A (Bank of England Financial Stability Paper No. 20, Apr. 2013), *available at http://www.bankofengland.co.uk/research/Documents/fspapers/fs_paper20.pdf* (noting the loss-allocation rules applied at the end of a clearing agency waterfall).

[617] *See* Exchange Act Release No. 34–72266 (May 28, 2014), 79 FR 32008 (June 3, 2014) (notice of filing and immediate effectiveness of proposed rule change by OCC to require that intraday margin be collected and margin assets not be withdrawn when a clearing member's reasonably anticipated settlement obligations to the clearing agency would exceed the clearing agency's liquidity resources available to satisfy such obligations).

[618] *See, e.g.,* CFTC–SEC Staff Roundtable on Clearing of Credit Default Swaps, at 123 (Oct. 2010), *available at http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission7_102210-transcrip.pdf* (Stan Ivanov of ICE stating, ''[A]t ICE we look at two simultaneous defaults of the two biggest losers upon extreme conditions . . . .''); *see also* ICE, CDS Client Clearing Overview, at 8 (Aug. 2013), *available at https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Client_Clearing_Overview.pdf* (noting that the guaranty fund covers the simultaneous default of the two largest clearing members); CME Rulebook, Ch. 8H, Rule 8H07, *available at http://www.cmegroup.com/rulebook/CME/I/8H/8H.pdf.*

[619] *See* 17 CFR 240.17Ad–22(b)(1).

[620] *See* 17 CFR 240.17Ad–22(b)(2).

[621] *See id.*

extreme jump-to-default risk and nonlinear payoffs associated with the nature of the financial products they clear and the participants in the markets they serve. Meanwhile, CCPs that clear products other than security-based swaps are subject to a ''cover one'' requirement.[622] Rule 17Ad–22(b)(3) also states that such policies and procedures may provide that additional financial resources be maintained by the CCP in combined or separately maintained funds.[623]

Under existing rules, CCPs collect contributions from their members for the purpose of establishing guaranty or clearing funds to mutualize losses under extreme but plausible market conditions. Currently, the guaranty funds or clearing funds consist of liquid assets and their sizes vary depending on a number of factors, including the products the CCP clears and the characteristics of CCP members. In particular, the guaranty funds for CCPs that clear security-based swaps are relatively larger, as measured by the size of the fund as a percentage of the total and largest exposures, than the guaranty or clearing funds maintained by CCPs for other financial instruments. CCPs generally take the liquidity of collateral into account when determining member obligations. Applying haircuts to assets posted as margin, among other things, mitigates the liquidity risk associated with selling margin assets in the event of a participant default.

Since the Commission proposed Rule 17Ad–22(e), certain clearing agencies have amended some of their policies with regards to credit risk. Such modifications include, for example, provisions that require real-time submission of all locked-in trade data submitted for trade recording and prohibit pre-netting and other practices that prevent real-time trade submission.[624] Another clearing agency has made modifications to its policies and procedures for stress testing frameworks.[625]

ii. Collateral and Margin

Rule 17Ad–22(b)(2) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit their exposures to participants.[626] This margin can also be used to reduce a CCP's losses in the event of a participant default.

Registered clearing agencies that provide CCP services take positions as substituted counterparties once their trade guarantee goes into effect. Therefore, if a counterparty whose obligations the registered clearing agency has guaranteed defaults, the covered clearing agency may face market risk, which can take one of two forms. First, a covered clearing agency is subject to the risk of movement in the market prices of the defaulting member's open positions. Where a seller defaults and fails to deliver a security, the covered clearing agency may need to step into the market to buy the security to complete settlement and deliver the security to the buyer. Similarly, where a buyer defaults, the covered clearing agency may need to meet payment obligations to the seller. Thus, in the interval between when a member defaults and when the covered clearing agency must meet its obligations as a substituted counterparty to complete settlement, market price movements expose the covered clearing agency to market risk. Second, the covered clearing agency may need to liquidate non-cash margin collateral posted by the defaulting member. The covered clearing agency is therefore exposed to the risk that erosion in market prices of the collateral posted by the defaulting member could result in the covered clearing agency having insufficient financial resources to cover the losses in the defaulting member's open positions.

To manage their exposure to market risk resulting from fulfilling a defaulting member's obligations, registered clearing agencies compute margin requirements using inputs such as portfolio size, volatility, and sensitivity to various risk factors that are likely to influence security prices. Moreover, since the size of price movements is, in part, a function of time, registered clearing agencies may limit their exposure to market risk by marking participant positions to market daily and, in some cases, more frequently. CCPs also use similar factors to determine haircuts applied to assets posted by members in satisfaction of margin requirements. To manage market risk associated with collateral liquidation, CCPs consider the current prices of assets posted as collateral and price volatility, asset liquidity, and the correlation of collateral assets and a member's portfolio of open positions. Further, because CCPs need to value their margin assets in times of financial stress, their rulebooks may include features such as market-maker domination charges that increase clearing fund obligations regarding open positions of members in securities in which the member serves as a dominant market maker. The reasoning behind this charge is that, should a member default, liquidity in products in which the member makes markets may fall, leaving these positions more difficult to liquidate for non-defaulting participants.

Rule 17Ab–22(b)(2) also requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to use risk-based models and parameters to set margin requirements.[627] The generally recognized standard for such models and parameters is, under normal market conditions, price movements that produce changes in exposures that are expected to breach margin requirements or other risk controls only 1% of the time (*i.e.*, at a 99% confidence interval) over a designated time horizon.[628] Currently, CCPs use margin models to ensure coverage at a single-tailed 99% confidence interval. Losses beyond this level are typically covered by the CCP's guaranty fund. This standard comports with existing international standards for bank capital requirements, which require banks to measure market risks at a 99% confidence interval when determining regulatory capital requirements.[629]

[622] *See supra* Part II.C.4.a (discussing the requirements for ''cover one'' and ''cover two'').

[623] *See id.*

[624] *See* Exchange Act Release No. 34–69890 (June 28, 2013), 78 FR 40538 (July 5, 2013) (order approving NSCC's proposed rule change to require that all locked-in trade data submitted to it for trade recording be submitted in real-time).

[625] *See* Exchange Act Release No. 34–77982 (June 2, 2016), 81 FR 36979 (June 8, 2016) (order approving ICE Clear Credit's proposed rule change to update and formalize its stress testing framework).

[626] *See* 17 CFR 240.17Ad–22(b)(2).

[627] *See id.*

[628] *See* 17 CFR 240.17Ad–22(a)(4). The Commission notes that because of modifications to Rule 17Ad–22(a), the definition of ''normal market conditions'' is being moved to Rule 17Ad–22(a)(11). The Commission is not altering the definition of ''normal market conditions.'' *See* Rule 17Ad–22(a)(11), *infra* Part VI.

[629] *See* BCBS, International Convergence of Capital Measurement and Capital Standards: A Revised Framework (June 2004), *available at http://www.bis.org/publ/bcbs107.pdf*; *see also* Darryll Hendricks & Beverly Hirtle, New Capital Rule Signals Supervisory Shift (Secondary Mortgage Mkts, Sept. 1998), *available at http://www.freddiemac.com/finance/smm/july98/pdfs/hen_hirt.pdf*.

Prior to this standard, banks measured value-at-risk using a range of confidence intervals from 90–99%. *See* BCBS, An Internal Model-Based Approach to Market Risk Capital Requirements, at 12 (Apr. 1995), *available at http://www.bis.org/publ/bcbs17.pdf*. When determining the minimum quantitative standards for calculating risk measurements, the BCBS noted then the importance of specifying ''a common and relatively conservative confidence level,'' choosing the 99% confidence interval over other less conservative measures. *See id.*

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Rule 17Ad–22(b)(2) also requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to review such margin requirements and the related risk-based models and parameters at least monthly.[630] CCPs are accordingly required to establish a model validation process that evaluates the adequacy of margin models, parameters, and assumptions. Additionally, CCPs are required to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the CCPs' margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated.[631]

Certain clearing agencies have amended their policies and procedures governing collateral and margin requirements since the Commission proposed Rule 17Ad–22(e). For example, one clearing agency has amended its rules to require that intraday margin be collected and to prohibit margin from being withdrawn if the agency anticipates that the settlement obligations would exceed the liquidity resources available to the agency to satisfy such settlement obligations.[632]

Other revisions include modifications to risk models to monitor margin coverage and risk exposure. For example, modifications include accounting for factors such as procyclicality or implied volatility of certain options to reflect future market fluctuations.[633] Amendments to backtesting procedures are designed to assist clearing agencies in determining the amount of margin to collect from clearing members.[634]

Additionally, certain modifications address exposure to wrong-way risk. For example, one clearing agency revised its margin methodology as applied to the family-issued securities of certain members to exclude these securities from the volatility component and then by charging an amount calculated, in part, by applying a haircut rate to the absolute value of the long net unsettled positions in the member's family-issued securities.[635] Other clearing agencies have adjusted their risk models to account for accumulation of general wrong-way risk at the portfolio level, while others have modified their policies with respect to the assets accepted as permitted cover, as well as limits on the value of the collateral that may be accepted as permitted cover.[636]

iii. Liquidity Risk

In addition to credit risk and the aforementioned market risk, registered clearing agencies also face liquidity or funding risk. Currently, covered clearing agencies have varying degrees of formality with respect to their standards and practices relating to liquidity shortfalls. To complete the settlement process, registered clearing agencies that employ netting rely on incoming payments from participants in net debit positions to make payments to participants in net credit positions. If a participant does not have sufficient funds or securities in the form required to fulfill a payment obligation immediately when due (even though it may be able to pay at some future time), or if a settlement bank is unable to make an incoming payment on behalf of a participant, a registered clearing agency may face a funding shortfall. Such funding shortfalls may occur due to a lack of financial resources necessary to meet delivery or payment obligations, however even registered clearing agencies that do hold sufficient financial resources to meet their obligations may not carry those in the form required for delivery or payments to participants.

A registered clearing agency that provides CCP services may hold additional financial resources to cover potential funding shortfalls in the form of collateral. As noted above, CCPs may take the liquidity of collateral into account when determining member obligations. Applying haircuts to illiquid assets posted as margin mitigates the liquidity risk associated with selling margin assets in the event of participant default. Some registered CCPs also arrange for liquidity provision from other financial institutions using lines of credit. Additionally, some registered clearing agencies enter into prearranged funding agreements with their members pursuant to their rules. For example, members of one registered clearing agency are obligated, under certain pre-defined circumstances, to enter into repurchase agreements against securities that would have been delivered to a defaulting member.

No rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to address liquidity risk. Since the Commission proposed Rule 17Ad–22(e), certain clearing agencies have amended their policies and procedures regarding liquidity risk including, for example, through sources such as committed credit facilities, private placements of debt, and committed securities repurchase agreements. Such provisions can assist the ability of clearing agencies to complete settlement obligations, particularly in the instances where a clearing member defaults. Additionally, certain clearing agencies have clarified certain rules by which they manage liquidity, including how they will access and use internal liquidity resources.[637]

e. Settlement

Rule 17Ad–22(d)(5) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate

Since its adoption in 1998, the standard has become a generally recognized practice of banks to quantify credit risk as the worst expected loss that a portfolio might incur over an appropriate time horizon at a 99% confidence interval. *See* Kenji Nishiguchi, Hiroshi Kawai & Takanori Sazaki, Capital Allocation and Bank Management Based on the Quantification of Credit Risk, at 83 (FRBNY Econ. Policy Rev., Oct. 1998), *available at http://www.newyorkfed.org/research/epr/98v04n3/9810nish.pdf*; Jeff Aziz & Narat Charupat, Calculating Credit Exposure and Credit Loss: A Case Study, at 34 (Sept. 1998), *available at http://www.bis.org/bcbs/ca/alrequse98.pdf*.

[630] *See* 17 CFR 240.17Ad–22(b)(2).

[631] *See* 17 CFR 240.17Ad–22(b)(4).

[632] *See* Exchange Act Release No. 34–72266 (May 28, 2014), 79 FR 32008 (June 3, 2014) (notice of filing and immediate effectiveness of OCC's proposed rule change to require that intraday margin be collected and margin assets not be withdrawn when a clearing member's reasonably anticipated settlement obligations would exceed the clearing agency's liquidity resources available to satisfy such settlement obligations).

[633] *See, e.g.,* Exchange Act Release No. 34–72756 (Aug. 4, 2014), 79 FR 46479 (Aug. 8, 2014) (order approving ICE Clear Europe's proposed rule change to credit default swap risk policies); Exchange Act Release No. 34–76781 (December 28, 2015), 81 FR 135 (order approving OCC's proposed rule change to modify its margin methodology by incorporating variations in implied volatility).

[634] *See, e.g.,* Exchange Act Release No. 34–75290 (June 24, 2015), 80 FR 37323 (June 30, 2015) (notice of no objection to OCC's advance notice concerning modifications to backtesting procedures in order to enhance monitoring of margin coverage and model risk exposure).

[635] *See* Exchange Act Release No. 34–76077 (Oct. 5, 2015), 80 FR 61256 (Oct. 9, 2015) (notice of no objection to NSCC's proposed rule change to enhance its margining methodology as applied to family-issued securities of certain members).

[636] *See, e.g.,* Exchange Act Release No. 34–75887 (Sept. 10, 2015), 80 FR 55672 (Sept. 16, 2015) (order approving ICE Clear Credit's proposed rule change to revise its risk management framework).

[637] *See, e.g.,* Exchange Act Release No. 34–72944 (Aug. 28, 2014), 79 FR 52789 (Aug. 28, 2014) (order approving ICE Clear Credit's proposed rule change related to its authority to use guaranty fund and house initial margin as an internal liquidity resource).

or strictly limit the clearing agency's settlement bank risks and require funds transfers to the clearing agency to be final when effected.[638] Rule 17Ad–22(d)(12) further requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that final settlement occurs no later than the end of the settlement day.[639] Accordingly, for example, certain registered clearing agencies provide for final settlement of securities transfers no later than the end of the day of the transaction. Rule 17Ad–22(d)(15) also requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to state to its participants the clearing agency's obligations with respect to physical deliveries and identify and manage the risks from these obligations.[640]

Since the Commission proposed Rule 17Ad–22(e), certain clearing agencies have amended their policies and procedures governing money settlements. These include, for example, provisions to convert U.S. Treasuries into cash when the sale of pledged securities cannot be settled on a same-day basis.[641]

f. CSDs

Rule 17Ad–22(d)(10) requires a registered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain securities in an immobilized or dematerialized form for transfer by book entry to the greatest extent possible. Currently, some securities, such as mutual fund securities and government securities, are issued primarily or solely on a dematerialized basis. Dematerialized shares do not exist as physical certificates but are held in book entry form in the name of the owner (which, where the master security holder file is not maintained on paper due to the use of technology, is also referred to as electronic custody). Other types of securities may be issued in the form of one or more physical security certificates, which could be held by the CSD to facilitate immobilization. Alternatively, securities may be held by the beneficial owner in record name, in the form of book-entry positions, where the issuer offers the ability for a security holder to hold through the direct registration system. Whether immobilization occurs at the CSD or through direct registration depends on what is provided for by the issuer.

When a trade occurs, the depository's accounting system credits one participant account and debits another participant account. Transactions between counterparties in dematerialized shares are recorded by the registrar responsible for maintaining the paper or electronic register of security holders, such as by a transfer agent, and reflected in customer accounts.

Registered CSDs currently reconcile ownership positions in securities against CSD ownership positions on the security holders list daily, mitigating the risk of unauthorized creation or deletion of shares.

g. Exchange-of-Value Settlement Systems

Rule 17Ad–22(d)(13) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment,[642] which serves to link obligations by conditioning the final settlement of one upon the final settlement of the other. One registered clearing agency, for example, operates a Model 2 DVP system that provides for gross securities transfers during the day followed by an end-of-day net funds settlement. Under the rules governing the clearing agency's system, the delivering party in a DVP transaction is assured that it will be paid for the securities once they are credited to the receiving party's securities account. DVP eliminates the risk that a buyer would lose the purchase price of a security purchased from a defaulting seller or that a seller would lose the sold security without receiving payment for a security acquired by a defaulting buyer.

For example, one registered clearing agency has rules governing its continuous net settlement (''CNS'') system, under which it becomes the counterparty for settlement purposes at the point its trade guarantee attaches, thereby assuming the obligation of its members that are receiving securities to receive and pay for those securities, and the obligation of members that are delivering securities to make the delivery. Unless the clearing agency has invoked its default rules, it is not obligated to make those deliveries until it receives from members with delivery obligations deliveries of such securities; rather, deliveries that come into CNS ordinarily are promptly redelivered to parties that are entitled to receive them through an allocation algorithm. Members are obligated to take and pay for securities allocated to them in the CNS process. These rules also provide mechanisms to allow receiving members a right to receive high priority in the allocation of deliveries, and also permit a member to buy-in long positions that have not been delivered to it by the close of business on the scheduled settlement date.

h. Participant-Default Rules and Procedures

Rule 17Ad–22(d)(11) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of its default procedures publicly available and establish default procedures that ensure it can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. The rules of registered clearing agencies typically state what constitutes a default, identify whether the board or a committee of the board may make that determination, and describe what steps the clearing agency may take to protect itself and its members. In this regard, registered clearing agencies typically attempt, among other things, to hedge and liquidate a defaulting member's positions. Rules of registered clearing agencies also include information about the allocation of losses across available financial resources.

i. Segregation and Portability

No rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to enable the portability of positions of a member's customers and the collateral provided in connection therewith. Additionally, no rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to protect the positions of a member's customers from the default or insolvency of the member.[643]

[638] *See* 17 CFR 240.17Ad–22(d)(5).

[639] *See* 17 CFR 240.17Ad–22(d)(12).

[640] *See* 17 CFR 240.17Ad–22(d)(15).

[641] *See* Exchange Act Release No. 34–74456 (March 6, 2015), 80 FR 13055 (Mar. 12, 2015) (order approving ICE Clear Credit's proposed rule change to revise its Treasury operations policies and procedures).

[642] *See* 17 CFR 240.17Ad–22(d)(13); *see also* Clearing Agency Standards adopting release, *supra* note 5, at 66256.

[643] *See supra* note 434 (discussing existing rules applicable to registered broker-dealers that address customer security positions and funds in cash securities and listed option markets, thereby

Continued

Since the Commission proposed Rule 17Ad–22(e), certain clearing agencies have modified their policies and procedures on segregation and portability. These amendments include implementing changes to the structure of customer accounts to enhance segregation options for customers and establishing new types of individually segregated accounts and omnibus accounts for cleared transactions, as well as modifications to these frameworks, as well as adopting an individual client segregation framework and modifications related to the omnibus client segregation model.[644] There have also been changes specifying certain fees applicable to segregated customer accounts, margin flow comingled accounts, and individually segregated sponsored accounts.[645]

j. General Business Risk

Business risk refers to the risks and potential losses arising from a registered clearing agency's administration and operation as a business enterprise that are neither related to member default nor separately covered by financial resources designated to mitigate credit or liquidity risk. While Rule 17Ad–22 sets forth requirements for registered clearing agencies to identify, monitor, and mitigate or eliminate a broad array of risks through written policies and procedures, no rule under the Exchange Act expressly requires a registered clearing agency through its written policies and procedures to identify, monitor, and manage general business risk or to meet a capital requirement. Nonetheless, registered clearing agencies currently have certain internal controls in place to mitigate business risk. Some clearing agencies, for instance, have policies and procedures that identify an auditor who is responsible for examining accounts, records, and transactions, as well as other duties prescribed in the audit program. Other registered clearing agencies allow members to collectively audit the books of the clearing agency on an annual basis, at their own expense.

Since the Commission proposed Rule 17Ad–22(e), certain clearing agencies have revised their policies and procedures related to general business risk. Such modifications include amendments to a shareholder agreement that are intended to increase the working capital available to conduct the business of the operating subsidiaries and allow the clearing agencies to maintain operations for a longer period during times of financial stress.[646]

k. Custody and Investment Risks

Registered clearing agencies face default risk from commercial banks that they use to effect money transfers among participants, to hold overnight deposits, and to safeguard collateral. Rule 17Ad–22(d)(3) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to (i) hold assets in a manner that minimizes risk of loss or delay in its access to them; and (ii) invest assets in instruments with minimal credit, market, and liquidity risks.[647] Registered clearing agencies currently seek to minimize the risk of loss or delay in access by holding assets that are highly liquid (*e.g.*, cash, U.S. Treasury securities, or securities issued by a U.S. government agency) and by engaging banks to custody the assets and facilitate settlement. Typically, registered clearing agencies take steps to ensure that assets held in custody are protected from claims from the custodian's creditors using trust accounts or equivalent arrangements. Additionally, a designated clearing agency may have or gain access to a Federal Reserve account and services.[648] Since the Commission proposed Rule 17Ad–22(e), certain clearing agencies have made modifications to the procedures and policies related to custody and investment risks. For example, one clearing agency adopted rules addressing certain investment losses on margin and guaranty fund contributions provided by clearing members.[649]

l. Operational Risk

Operational risk refers to a broad category of potential losses arising from deficiencies in internal processes, personnel, and information technology. Registered clearing agencies face operational risk from both internal and external sources, including human error, system failures, security breaches, and natural or man-made disasters. Rule 17Ad–22(d)(4) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and to minimize those risks through the development of appropriate systems, controls and procedures.[650] It also requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to (i) implement systems that are reliable, resilient, and secure, and have adequate, scalable capacity; and (ii) have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations.[651]

As a result, registered clearing agencies have developed and currently maintain plans to ensure the safeguarding of securities and funds, the integrity of automated data processing systems, and the recovery of securities, funds, or data under a variety of loss or destruction scenarios.[652] These plans may include turning operations over to a secondary site that is located a sufficient distance from the primary location to ensure a distinct geographic risk profile. In addition, registered clearing agencies generally maintain an internal audit department to review the adequacy of their internal controls, procedures, and records with respect to operational risks. Some registered clearing agencies also engage independent accountants to perform an annual study and evaluation of the internal controls relating to their operations.[653]

As discussed above, the Commission adopted Regulation SCI in November 2014, in part, to help reduce the occurrence of systems issues, and improve resiliency when systems problems do occur at certain SROs, such as registered clearing agencies and to enhance the Commission's oversight and enforcement of securities market technology infrastructure. Regulation

promoting segregation and portability at the broker-dealer level).

[644] *See, e.g.*, Exchange Act Release Nos. 34–72755 (Aug. 4, 2014), 79 FR 46481 (Aug. 8, 2014), 34–72754 (Aug. 4, 2014), 79 FR46477 (Aug. 8, 2014) (approval orders related to ICE Clear Europe's proposed rule changes related to segregation and portability), and 34–73344 (Oct. 14, 2014), 76 FR 62694 (Oct. 20, 2014) (notice of filing and immediate effectiveness of proposed rule change related to segregation and portability).

[645] *See, e.g.,* Exchange Act Release No. 34–75657 (Aug.10, 2015), 80 FR 48937 (Aug. 14, 2015) (notice of filing and immediate effectiveness of ICE Clear Europe's proposed rule change to adopt revised fee schedule).

[646] *See* Exchange Act Release No. 34–74142 (Jan. 27, 2015), 80 FR 5188 (Jan. 30, 2015) (notice of no objection to NSCC and FICC advance notices to amend and restate the third and amended restated shareholders agreement).

[647] *See* 17 CFR 240.17Ad–22(d)(3).

[648] *See supra* Part II.C.7 (discussing the requirements under Rule 17Ad–22(e)(7)(iii)).

[649] *See* Exchange Act Release No. 34–72551 (July 8, 2014), 79 FR 16361 (July 14, 2014) (order approving ICE Clear Europe's proposed rule change regarding investment losses and non-default losses).

[650] *See* 17 CFR 240.17Ad–22(d)(4).

[651] *See id.*

[652] Many of these practices had been previously developed pursuant to prior Commission guidelines. *See supra* Part I.A.1 (discussing related requirements under Regulation SCI).

[653] *See, e.g.,* NSCC, Assessment of Compliance with the CPSS/IOSCO Recommendations for Central Counterparties (Nov. 2011), *available at http://www.dtcc.com/legal/policy-and-compliance.aspx.*

SCI requires that registered clearing agencies, as SCI entities, have policies and procedures that include business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve two-hour resumption of critical SCI systems following a wide-scale disruption. In particular, as discussed above, in the Regulation SCI adopting release the Commission explained its view that for clearance and settlement systems a return to ''normal operations'' following a systems disruption would include all steps necessary to effectuate timely and accurate end of day settlement.[654] Since the Commission proposed Rule 17Ad–22(e), certain clearing agencies have revised aspects of their operational risk policies and procedures, including for the purposes of complying with Regulation SCI. For example, one clearing agency revised its policies and procedures for testing of business continuity and disaster recovery plans, including with respect to a member's requirement to participate in such testing.[655]

m. Access and Participation Requirements

Rule 17Ad–22(b)(5) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide the opportunity for a person that does not perform any dealer or security-based swap dealer services to obtain membership on fair and reasonable terms at the clearing agency to clear securities for itself or on behalf of other persons.[656] Rule 17Ad–22(b)(6) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to have membership standards that do not require participants to maintain a portfolio of any minimum size or a minimum transaction volume.[657] Rule 17Ad–22(b)(7) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital equal or greater than $50 million with the ability to obtain membership at the clearing agency, provided such persons are able to comply with reasonable membership standards, with higher net capital requirements permissible subject to Commission approval.[658]

In addition, Rule 17Ad–22(d)(2) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, have procedures in place to monitor that participation requirements are met on an ongoing basis, and have participation requirements that are objective and publicly disclosed, and permit fair and open access.[659] Typically, a registered clearing agency's rulebook requires applicants for membership to provide certain financial and operational information prior to being admitted as a member and on an ongoing basis as a condition of continuing membership. Registered clearing agencies review this information to ensure that the applicant has the operational capability to meet the other demands of interfacing with the clearing agency. In particular, registered clearing agencies typically require that an applicant demonstrate that it has adequate personnel capable of handling transactions with the clearing agency and adequate physical facilities, books and records, and procedures to fulfill its anticipated commitments to, and to meet the operational requirements of, the clearing agency and other members with necessary promptness and accuracy. As a result, an applicant needs to demonstrate that it has adequate personnel capable of handling transactions with the clearing agency and adequate physical facilities, books and records, and procedures to conform to conditions or requirements in these areas that the clearing agency reasonably may deem necessary for its protection. Registered clearing agencies have published these requirements on their Web sites.

Registered clearing agencies use an ongoing monitoring process to help them understand relevant changes in the financial condition of their members and to mitigate credit risk exposure of the clearing agency to its members. The risk management staff analyzes financial statements filed with regulators, as well as information obtained from other SROs and gathered from various financial publications, so that the clearing agency may evaluate, for instance, whether members maintain sufficient financial resources and robust operational capacity to meet their obligations as participants in the clearing agency pursuant to existing Rule 17Ad–22(d)(2)(i).

Table 1 contains membership statistics for registered clearing agencies.[660] Current membership generally reflects features of cleared markets. The decision to become a clearing member depends on the products being cleared and the structure of these asset markets, as well as the current state of regulation for cleared markets. For example, the structure of security-based swap markets and the payoffs to security-based swap contracts differs markedly from that of equity markets and common stock, which may explain some of the differences between the concentrated membership of certain clearing agencies and the relatively broader membership of others.

n. Tiered Participation Arrangements

Tiered participation arrangements occur when clearing members (direct participants) provide access to clearing services to third parties (indirect participants). No rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to identify, monitor, and manage material risks arising from tiered participation arrangements. The Commission understands, however, that certain registered clearing agencies have policies and procedures currently in place to identify, monitor, or manage such arrangements. Specifically, such clearing agencies rely on information gathered from, and distributed by, direct participants to manage these tiered participation arrangements. For example, under some covered clearing agencies' rules, direct participants generally have the responsibility to indicate to the clearing agency whether a transaction submitted for clearing represents a proprietary or customer position. Such rules further require direct participants to calculate, and notify the clearing agency of the value of, each customer's collateral. Direct participants also communicate with indirect participants regarding the clearing agency's margin and other requirements.

[654] *See supra* note 37 and accompanying text.

[655] *See* Exchange Act Release No. 34–76278 (Oct. 27, 2015), 80 FR 67450 (Nov. 2, 2015) (notice of filing and immediate effectiveness of FICC's proposed rule change to provide additional details regarding the requirement that members participate in annual testing of business continuity and disaster recovery plans).

[656] *See* 17 CFR 240.17Ad–22(b)(5).

[657] *See* 17 CFR 240.17Ad–22(b)(6).

[658] *See* 17 CFR 240.17Ad–22(b)(7).

[659] *See* 17 CFR 240.17Ad–22(d)(2).

[660] *See supra* Part III.A.

o. Links

Rule 17Ad–22(d)(7) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear or settle trades, and ensure that the risks are managed prudently on an ongoing basis.[661]

Each registered clearing agency is linked to other clearing organizations, trading platforms, and service providers. For instance, a link between U.S. and Canadian clearing agencies allows U.S. members to clear and settle valued securities transactions with participants of a Canadian securities depository. The link is designed to facilitate cross-border transactions by allowing members to use a single depository interface for U.S. and Canadian dollar transactions and eliminate the need for split inventories.[662] Registered clearing agencies that provide CCP services currently establish links to allow members to realize collateral and other operational efficiencies.

p. Efficiency and Effectiveness

Rule 17Ad–22(d)(6) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the clearing agency to be cost-effective in meeting the requirements of participants while maintaining safe and secure operations.[663] Registered clearing agencies have procedures to control costs and to regularly review pricing levels against operating costs. These clearing agencies may use a formal budgeting process to control expenditures, and may review pricing levels against their costs of operation during the annual budget process. Registered clearing agencies also analyze workflows to make recommendations to improve their operating efficiency.

q. Communication Procedures and Standards

Although no rule under the Exchange Act expressly requires a registered clearing agency through its written policies and procedures to use or accommodate relevant internationally accepted communication procedures and standards, the Commission believes that registered clearing agencies already use these standards. Registered clearing agencies typically rely on electronic communication with market participants, including members. For example, some registered clearing agencies have rules in place stating that clearing members must retrieve instructions, notices, reports, data, and other items and information from the clearing agency through electronic data retrieval systems. Some registered clearing agencies have the ability to rely on signatures transmitted, recorded, or stored through electronic, optical, or similar means. Other clearing agencies have policies and procedures that provide for certain emergency meetings using telephonic or other electronic notice.

r. Disclosure

Disclosures by registered clearing agencies serve to limit the size of potential information asymmetries between registered clearing agencies, their members, and market participants. Rule 17Ad–22(d)(9) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide market participants with sufficient information for them to identify and evaluate risks and costs associated with using the clearing agency's services.[664] Information regarding the operations and services of each registered clearing agency can be viewed publicly either on the clearing agency's Web site or a Web site maintained by an affiliate of the clearing agency. Because a registered clearing agency is an SRO,[665] it must file with the Commission any proposed rule or any proposed change in, addition to, or deletion from its rules, and the Commission reviews all proposed rule changes and publishes them for comment.[666] Proposed rule changes also are available for public viewing on each clearing agency's Web site.

Besides providing market participants with information on the risks and costs associated with their services, registered clearing agencies regularly provide information to their members to assist them in managing their risk exposures and potential funding obligations. Some of these disclosures may be common to all members—such as information about the composition of clearing fund assets—while other disclosures that concern particular positions or obligations may only be made to individual members.

Finally, the Commission notes that most registered clearing agencies currently publish on their Web sites their responses to the PFMI quantitative disclosures.[667] These disclosures are to be updated semi-annually.

B. Consideration of Benefits, Costs, and the Effect on Competition, Efficiency, and Capital Formation

The discussion below sets forth the potential economic effects stemming from the adopted rules. The section begins by framing more general economic issues related to the amendments to Rule 17Ad–22 and Rule 17Ab2–2. The discussion that follows considers the effects of the rules on efficiency, competition, and capital formation. The section ends with a discussion of the benefits and costs flowing from specific provisions of the amendments to Rule 17Ad–22 and Rule 17Ab2–2.

1. General Economic Considerations

This section considers potential impacts of the amendments, as a whole, through their effects on systemic risk, the discretion with which covered clearing agencies operate, market integrity, concentration in the market for clearing services and among clearing members, and QCCP status.

a. Systemic Risk

A large portion of financial activity in the United States ultimately flows through one or more registered clearing agencies that would become covered clearing agencies under the amendments to Rule 17Ad–22. These clearing agencies have direct links to members and indirect links to the customers of members. They are also linked to each other through common members, operational processes, and in some cases cross-margining and cross-guaranty agreements. These linkages allow covered clearing agencies to provide opportunities for risk-sharing but also allow them to serve as potential conduits for risk transmission. Covered clearing agencies play an important role in fostering the proper functioning of financial markets. If they are not effectively managed, however, they may transmit financial shocks to other financial market participants through their responses to clearing member default.

The centralization of clearance and settlement activities at covered clearing agencies allows market participants to reduce costs, increase operational

[661] *See* 17 CFR 240.17Ad–22(d)(7).

[662] *See* Exchange Act Release No. 52784 (Nov. 16, 2005), 71 FR 70902 (Nov. 23, 2005); Exchange Act Release No. 55239 (Feb. 5, 2007), 72 FR 6797 (Feb. 13, 2007).

[663] *See* 17 CFR 240.17Ad–22(d)(6).

[664] *See* 17 CFR 240.17Ad–22(d)(9).

[665] *See supra* Part I.A.1.

[666] *See supra* notes 12–13.

[667] *See supra* note 41.

efficiency, and manage risks more effectively.[668] While providing benefits to market participants, the concentration of these activities at a covered clearing agency implicitly exposes market participants to the risks faced by covered clearing agencies themselves, making risk management at covered clearing agencies a key element of systemic risk mitigation.

b. Discretion

The Commission recognizes that the degree of discretion permitted by the amendments to Rule 17Ad–22 partially determines their economic effect. Even where current practices at covered clearing agencies would not need to change significantly to comply with the rules, as adopted, covered clearing agencies could still potentially face costs associated with the limitations on discretion that will result from the rules, including costs related to limiting a clearing agency's flexibility to respond to changing economic environments. For example, to the extent that covered clearing agencies currently in compliance with Rule 17Ad–22(e) value the ability to periodically allow net liquid assets to drop below the minimum level specified by the rules, they may incur additional costs because under Rule 17Ad–22(e) they lose the option to do so.

Although there may be costs to limiting the degree of discretion covered clearing agencies have over risk management policies and procedures, the Commission believes there are also potential benefits. As discussed above, clearing agencies may not fully internalize the social costs of poor internal controls and thus, given additional discretion, may not craft appropriate risk management policies and procedures. For example, even if existing regulation provides clearing agencies with the incentives necessary to manage risks appropriately in a static sense, they may not provide clearing agencies with incentives to update their risk management programs in response to dynamic market conditions. Additionally, efforts at cost reduction or profit maximization could encourage clearing agencies to reduce the quality of risk management by, for example, choosing to update parameters and assumptions rapidly in periods of low volatility while maintaining stale parameters and assumptions in periods of high volatility. By reducing covered clearing agencies' discretion over their policies and procedures, the amendments to Rule 17Ad–22 may reduce the likelihood that risk management practices lag behind changing market conditions by requiring periodic analysis of model performance while paying particular attention to periods of high volatility or low liquidity.

Subjecting covered clearing agencies to more specific requirements may have other benefits for cleared markets as well. Academic research has explored the ways in which regulation affects liquidity in financial markets when participants are ''ambiguity averse,'' where ambiguity is defined as uncertainty over the set of payoff distributions for an asset.[669] Such investors may heavily weigh worst-case scenarios when they decide whether to hold the asset. The Commission believes that regulation aimed at enhancing standards for covered clearing agencies while reducing their discretion may reduce the ambiguity associated with holding cleared assets in the presence of credit risk and settlement risk[670] and thus may allow investors to rule out worst-case states of the world. In this regard, more specific rules may encourage participation in cleared markets by investors that benefit from resulting risk-sharing opportunities.[671]

c. Market Integrity

The Commission believes that the amendments to Rule 17Ad–22 could provide the benefit of reduced potential for market fragmentation that may arise from different requirements across regulatory regimes. These benefits would flow to markets that are also supervised by the CFTC and FRB, and internationally, since cleared markets are global in nature and linked to one another through common participants.

Failure to maintain consistency with other regulators may disrupt cleared markets in a number of ways. Significant differences across regulatory regimes may encourage participants to restructure their operations to avoid a particular regulatory regime.[672] Such differences may reduce the liquidity of cleared products in certain markets if they result in an undersupply of clearing services. Further, inconsistency in regulation across jurisdictions may increase the likelihood that restructuring by market participants in response such inconsistency results in concentrating clearing activity in regimes with a weaker commitment to policies and procedures for sound risk management. Differences across regulatory regimes could also affect the products that a clearing agency chooses to clear. In turn, a shift in product choice could result in more concentrated liquidity for certain markets.

In the case of clearing agency standards, there are additional motivations for consistency with other regulatory requirements. The Commission believes that such consistency would prevent the application of inconsistent regulation and thereby reduce the likelihood that participants in cleared markets would restructure and operate in less-regulated markets. Additionally, such consistency would allow foreign bank clearing members and foreign bank customers of clearing members of covered clearing agencies to be subject to lower capital requirements under the BCBS capital framework.[673]

Based on its consultation and coordination with other regulators, the Commission believes Rule 17Ad–22(e) is consistent and comparable, where possible and appropriate, with the rules and policy statement adopted by the FRB and the rules adopted by the CFTC, as well as the headline principles in the PFMI. The Commission's rules differ from those requirements adopted by the CFTC and FRB in terms of the specific portions of the key considerations and explanatory text in the PFMI that are, or are not, referenced or emphasized.

Further, CPMI–IOSCO members are also in various stages of implementing the standards in the PFMI into their own regulatory regimes, and the Commission believes that adopting a set of requirements generally consistent with the relevant international standards would result in diminished

[668] *Cf.* PFMI, *supra* note 2, at 9.

[669] *See e.g.,* Itzhak Gilboa & David Schmeidler, Maxmin Expected Utility with Non-Unique Prior, 18 J. Mathematical Econ. 141 (1989) (proposing an axiomatic foundation of a decision rule based on maximizing expected minimum payoff of a strategy).

[670] Specifically, by performing key roles in the transaction process, clearing agencies serve to maintain higher minimum payoffs in poor states of the world, by, for example, immobilizing securities or adopting DVP systems.

[671] *See e.g.,* David Easley & Maureen O'Hara, Microstructure and Ambiguity, 65 J. Fin. 1817 (2010) (using a theoretical model of trade on venues that differ in rules, the authors show how rules that reduce market-related ambiguity may induce a participatory equilibrium).

[672] *See, e.g.,* Arnoud W.A. Boot, Silva Dezõelan, & Todd T. Milbourn, Regulatory Distortions in a Competitive Financial Services Industry, 16 J. Fin. Serv. Res. 249 (2000) (showing that, in a simple industrial organization model of bank lending, a change in the cost of capital resulting from regulation results in a greater loss of profits when regulated banks face competition from non-regulated banks than when regulations apply equally to all competitors); Victor Fleischer, Regulatory Arbitrage, 89 Tex. L. Rev. 227 (2010) (discussing how, when certain firms are able to choose their regulatory structure, regulatory costs are shifted onto those entities that cannot engage in regulatory arbitrage).

[673] *See* BCBS capital framework, *supra* note 44.

likelihood that participants in cleared markets would restructure and operate in less-regulated markets.[674] Additionally, international standards such as the BCBS capital framework could create complications for U.S. clearing agencies not subject to regulations based on the PFMI as a result of the BCBS capital framework's treatment of QCCPs. In particular, if U.S. clearing agencies do not obtain QCCP status from foreign banking regulators who have adopted rules conforming to the BCBS capital framework because, for instance, the regulatory framework is not consistent with the PFMI, foreign bank members of U.S. clearing agencies may have incentives to move their clearing business to clearing agencies in jurisdictions where they might obtain lower capital requirements under the BCBS capital framework.[675]

d. Concentration

The economic effects associated with the amendments to Rule 17Ad–22 may also be partially determined by the economic characteristics of clearing agencies. Generally, the economic characteristics of FMIs, including clearing agencies, include specialization, economies of scale, barriers to entry, and a limited number of competitors.[676] Such characteristics, coupled with the particulars of an FMI's legal mandate, could result in market power, leading to lower levels of service, higher prices, and under-investment in risk management systems.[677]

The centralization of clearing activities in a relatively small number of clearing agencies somewhat insulated from market forces may result in a reduction in their incentives to innovate and to invest in the development of appropriate risk management practices on an ongoing basis,[678] particularly when combined with the cost reduction pressures noted previously.[679] However, the Commission notes that the inverse may not necessarily hold. In other words, additional competition in the market for clearing services may not necessarily result in improved risk management. For instance, aggressive price-cutting in a ''race to the bottom'' may result in clearing agencies accepting lower-quality collateral, requiring lower margin and default fund contributions, lowering access requirements, or holding lower reserves, potentially undermining their risk management efforts.[680]

Market power may raise particular issues with respect to the allocation of benefits and costs flowing from these amendments to Rule 17Ad–22 and precipitate changes in the structure of the financial networks that are served by covered clearing agencies. For example, as a result of limited competition,[681] existing covered clearing agencies may easily pass the incremental costs associated with enhanced standards on to their members, who may share these costs with their customers, potentially resulting in increased transaction costs in cleared securities.

If incremental increases in costs lead clearing agencies to charge higher prices for their services, then certain clearing members may choose to terminate membership and cease to clear transactions for their customers. Should this situation occur, the result may be further concentration among clearing members, where each remaining member clears a higher volume of transactions. In this case, clearing agencies and the financial markets they serve would be more exposed to these larger clearing members. Moreover, customers would have fewer resources or options for obtaining such services, clearing agencies would have fewer non-defaulting members to take on defaulting members portfolios, and clearing agencies that rely on clearing members to participate in default auctions would hold auctions with fewer participants. The remaining clearing members may, however, each internalize more of the costs their activity in cleared markets imposes on the financial system.

The increased importance of a small set of clearing members, in turn, may result in firms not previously systemically important increasing in systemic importance. This is particularly true for clearing members that participate in multiple markets, both cleared and not cleared.[682] However, adequate regulation of capital levels and margin amounts at surviving clearing members could mean that, though shocks to these members may be larger, the propagation of shocks may be limited to a smaller set of entities and their equity holders.

e. QCCP Status and Externalities on Clearing Members

An effect of the amendments to Rule 17Ad–22 is that covered clearing agencies required to comply with the adopted rules may be more likely to qualify as QCCPs in non-U.S. jurisdictions that have adopted the BCBS capital framework's QCCP definition. Under the BCBS capital framework, a QCCP is defined as an entity operating as a CCP that is prudentially supervised in a jurisdiction where the relevant regulator has established, and publicly indicated that it applies to the CCP on an ongoing basis, domestic rules and regulations that are consistent with the PFMI.[683] Because the amendments to Rule 17Ad–22 are consistent with the PFMI, the Commission believes that foreign bank clearing members of certain covered clearing agencies and foreign banks

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[674] *See supra* note 43.

[675] *See supra* notes 44–45 and *infra* Part III.B.1.e (discussing the BCBS capital framework and the economic effect of QCCP status under the BCBS capital framework, respectively).

[676] *See supra* note 39 (defining ''financial market infrastructure'').

[677] *Cf.* PFMI, *supra* note 2, at 11.

[678] The Commission notes that this result depends on the relationship between the cost of innovations in risk management and the private benefits to a clearing agency in terms of reduced default risk. Absent competitive pressures, a clearing agency may nevertheless invest in the development of risk management practices so long as the marginal benefits of risk reduction exceed the marginal cost.

[679] *See* Kenneth J. Arrow, Economic Welfare and the Allocation of Resources for Invention 609–626, *in* The Rate and Direction of Inventive Activity: Economic and Social Factors (NBER, 1962), *available at http://www.nber.org/chapters/c2144.pdf.*

[680] *See* CPSS, Market Structure Development in the Clearing Industry: Implications for Financial Stability, at sec. 5 (Nov. 2010), *available at http://www.bis.org/publ/cpss92.pdf; see also* Siyi Zhu, Is There a 'Race to the Bottom' in Central Counterparties Competition?—Evidence from LCH.Clearnet SA, EMCF and EuroCCP, DNB Occasional Studies, Vol. 9, No. 6 (2011); John Kiff et al., Credit Derivatives: Systemic Risks and Policy Options (IMF Working Paper No. 254, Nov. 2009), *available at http://www.imf.org/external/pubs/ft/wp/2009/wp09254.pdf.*

[681] *See generally* Nadia Linciano, Giovanni Siciliano & Gianfranco Trovatore, The Clearing and Settlement Industry: Structure Competition and Regulatory Issues (Italian Secs. & Exch. Comm'n Research Paper 58, May 2005), *available at http://www.ssrn.com/abstract=777508* (concluding in part that the core services offered by the clearance and settlement industry tend toward natural monopolies because the industry can be characterized as a network industry, where consumers buy systems rather than single goods, consumption externalities exist, costs lock-in consumers once they choose a system, and production improves with economies of scale); Heiko Schmiedel, Markku Malkamäki & Juha Tarkka, Economies of Scale and Technological Development in Securities Depository and Settlement Systems, at 10 (Bank of Fin. Discussion Paper 26, Oct. 2002), *available at http://www.suomenpankki.fi/en/julkaisut/tutkimukset/keskustelualoitteet/Documents/0226.pdf* (''The overall results of this study reveal the existence of substantial economies of scale among depository and settlement institutions. On average, the centralized U.S. system is found to be the most cost effective settlement system and may act as the cost saving benchmark.'').

[682] *See, e.g.,* Mark J. Roe, Clearinghouse Overconfidence, 101 Cal. L. Rev. 1641 (2013), *available at http://scholarship.law.berkeley.edu/californialawreview/vol101/iss6/3* (arguing that counterparty risk concentrated within CCPs may be transferred to the broader financial system through links between clearing members and their clients).

[683] *See* supra notes 44–45 and accompanying text (discussing the BCBS capital framework).

clearing indirectly through clearing members of covered clearing agencies may benefit from covered clearing agencies obtaining QCCP status. In particular, bank clearing members and bank indirect participants of covered clearing agencies that could attain QCCP status would face lower capital requirements with respect to cleared derivatives and repurchase agreement transactions because, under the BCBS capital framework, capital requirements for bank exposures to QCCPs are lower than capital requirements for bank exposures to non-qualifying CCPs for these products. Although the FRB and the Office of the Comptroller of the Currency have already adopted rules implementing the BCBS capital framework that would identify all covered clearing agencies (with the exception of ICEEU) as QCCPs for the purposes of applying risk weights to assets at U.S. banks,[684] the adopted amendments to Rule 17Ad–22 may result in non-U.S. bank clearing members experiencing lower capital requirements related to exposures against covered clearing agencies relative to a baseline scenario in which foreign banking regulators do not determine that a covered clearing agency is a QCCP.[685]

The BCBS capital framework affects capital requirements for bank exposures to central counterparties in two important ways. The first relates to trade exposures, defined under the BCBS capital framework as the current and potential future exposure of a clearing member or indirect participant in a CCP arising from OTC derivatives, exchange-traded derivatives transactions, and securities financing transactions. If these exposures are held against a QCCP, they will be assigned a risk weight of 2%. In contrast, exposures against non-qualifying CCPs do not receive lower capital requirements relative to bilateral exposures and are assigned risk weights between 20% and 100%, depending on counterparty credit risk. Second, the BCBS capital framework imposes a cap on risk weights applied to default fund contributions, limiting risk-weighted assets (subject to a 1250% risk weight) to a cap of 20% of a clearing member's trade exposures against a QCCP. This is in contrast to treatment of exposures against non-qualifying CCPs, which are uncapped and subject to a 1250% risk weight. Because QCCP status generally impacts capital treatment, any benefits of attaining QCCP status will likely accrue, at least in part, to foreign clearing members or foreign indirect participants subject to the BCBS capital framework.[686] As a result of lower risk weights applied to exposures and a cap on capital requirements against default fund obligations, clearing members of QCCPs subject to BCBS capital framework may experience an improved capital position relative to bank members of non-QCCPs. This may lower funding costs for bank members of QCCPs.[687]

Non-U.S. banks that are constrained by BCBS tier one capital requirements would face a shock to risk-weighted assets once capital rules come into force.[688] The size of the shock depends on regulators' determinations with regard to QCCP status. Regardless of the size of the shock and to come into compliance with capital rules, however, affected banks will have to raise capital or reduce leverage. In the absence of perfect markets, these banks may incur ongoing costs as a result.

In quantifying the benefits of achieving QCCP status, the Commission based its estimate on publicly available information with regard to OCC.[689] To estimate the upper bound for the potential benefits accruing to bank clearing members at OCC as a result of QCCP status, the Commission identified a sample of 28 bank clearing members at OCC and, for each bank, collected information about total assets, risk weighted assets, net income and tier one capital ratio at the holding company level for 2015.[690] The Commission then allocated trade exposures and default fund exposures across the sample of bank clearing members based on the level of risk-weighted assets.[691] The Commission measured the impact on risk-weighted assets for non-U.S. bank clearing members under two different capital treatment regimes. The first regime is in the absence of QCCP status, assuming a 100% risk weight applied to trade exposures and 1250% risk weight applied to default fund exposures for non-U.S. members. In the second regime, OCC obtains QCCP status, and banks are allowed to apply a 2% risk weight applied to trade exposures and a 1250% risk weight to default fund exposures up to a total exposure cap of 20% of trade exposures.[692] If OCC 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. The Commission estimates that benefits associated with OCC obtaining QCCP status stemming from lower capital requirements against trade exposures to QCCPs as a result of the adopted rules to have an upper bound of $1.2 billion per year, or approximately 0.73% of the total 2015 net income reported by the sample of bank clearing members at OCC.

The Commission's analysis is limited in several respects and relies on several

[684] *See infra* Part III.B.1.e.

[685] The Commission notes that benefits to banks that may arise as a result of the rules may be contingent upon regulators in other jurisdictions taking action to recognize the QCCP status of covered clearing agencies.

[686] For a discussion of the effects of QCCP status on competition between bank and non-bank clearing members, see Part III.B.2.a.

[687] *See supra* note 597 (noting that the Commission currently expects the lower capital treatment under the BCBS capital framework to affect registered clearing agencies FICC, ICEEU, and OCC, each of which would meet the definition of a ''covered clearing agency'').

[688] As discussed above, the FRB and Office of Comptroller of the Currency have adopted rules implementing capital requirements under the BCBS capital framework that make capital treatment for exposures to CCPs independent of the adopted rules for U.S. banks regulated by these two agencies, and therefore the Commission believes no benefits would accrue to U.S. bank clearing members of FICC and OCC.

[689] Under the BCBS capital framework, ICCEU and FICC's repurchase agreement segment would also be eligible for QCCP status. However, FICC does not report counterparties to repo agreements, and ICEEU does not separately report exposures related to security-based swap clearing, so we are currently unable to quantify potential benefits related to QCCP status for these entities.

[690] The Commission used the set of entities it identified as banks on OCC's member list, available at *http://www.optionsclearing.com/membership/member-information/*. For U.S. bank holding companies, 2015 total assets, risk weighted assets, net income, and tier 1 capital ratios were collected from Y–9C reports available at the National Information Center, *https://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx*. For non-U.S. bank holding companies, Commission staff obtained corresponding data from financial statements and supplementary financial materials posted to bank Web sites. Where necessary, values were converted back to U.S. dollars at December 31, 2015 exchange rates obtained from the Federal Reserve, available at *http://www.federalreserve.gov/releases/h10/hist/*.

[691] For example, one bank in the sample, with 5.53% of total risk-weighted assets, was assigned 5.53% of the total trade and default fund exposures while another bank in the sample, with 4.21% of total risk weighted assets, was assigned 4.21% of these exposures. Because trade exposures of OCC members against OCC are nonpublic, the Commission used the balance of OCC margin deposits and deposits in lieu of margin held at OCC, $73.54 billion, as a proxy for trade exposures. OCC's 2015 clearing fund deposits were valued at $12.08 billion. *See* OCC, 2015 Annual Report, *available at http://www.optionsclearing.com/components/docs/about/annual-reports/occ-2015-annual-report.pdf*.

[692] The BCBS capital framework allows banks to compute default fund exposures in two ways. Method 1 involves computing capital requirements for each member proportional to its share of an aggregate capital requirement for all clearing members in a scenario where to average clearing members default. The Commission currently lacks data necessary to compute default fund exposures under this approach, instead we use Method 2, which caps overall exposure to a QCCP at 20% of trade exposures. *See* BCBS capital framework, *supra* note 44, Annex 4, paras. 121–25 (outlining two methods for computing default fund exposures).

assumptions. First, a limitation of our proxy for trade exposures and our use of OCC's clearing fund is that the account balances include deposits by bank clearing members, who would experience lower capital requirements under the BCBS capital framework, and non-bank clearing members who would not. The Commission assumes, for the purposes of establishing an upper bound for the benefits to market participants that are associated with QCCP status for OCC under the adopted rules, that the balance of both OCC's margin account and OCC's default fund are attributable only to bank clearing members. Additionally, we assume an extreme case where, in the absence of QCCP status, trade exposures against a CCP would be assigned a 100% risk weight, causing the largest possible shock to risk-weighted assets for affected banks.

Lower capital requirements on trade exposures to OCC would produce effects in the real economy only under certain conditions. First, agency problems, taxes, or other capital market imperfections could result in banks targeting a particular capital structure. Second, capital constraints on bank clearing members subject to the BCBS capital framework must bind so that higher capital requirements on bank clearing members subject to the BCBS capital framework in the absence of QCCP status would cause these banks to exceed capital constraints if they chose to redistribute capital to shareholders or invest capital in projects with returns that exceed their cost of capital. Using publicly available data, however, it is not currently possible to determine whether capital constraints will bind for bank clearing members when rules applying the BCBS capital framework come into force, so to estimate an upper bound for the effects of QCCP status on bank clearing members we assume that tier one capital constraints for all bank clearing members of OCC would bind in an environment with zero weight placed on bank exposures to CCPs.[693]

For the purposes of quantifying potential benefits from QCCP status, the Commission has also assumed that banks choose to adjust to new capital requirements by deleveraging. In particular, the Commission 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 Basel framework of 8.5%. We measure the ongoing costs to each non-U.S. bank by multiplying the implied change in total assets by each bank's return on assets, estimated using up to 14 years of annual financial statement data.[694]

The BCBS capital requirements for exposures to CCPs yield additional benefits for QCCPs that the Commission is currently unable to quantify due to 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 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 that are subject to the BCBS capital framework share some of the benefits of QCCP status.

Furthermore, the fact that the BCBS capital framework applies to bank clearing members may have important implications for competition and concentration. While Rule 17Ad–22(e) may extend lower capital requirements against exposures to CCPs to non-U.S. bank clearing members of covered clearing agencies,[695] the benefits of QCCP status will still be limited to bank clearing members. However, the costs associated with compliance with Rule 17Ad–22(e) 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 ''crowding out'' of members of QCCPs that are not banks and will not experience benefits with respect to the BCBS capital framework. This may result in an unintended consequence of increased concentration of clearing activity among bank clearing members. As noted in Part III.B.1.d, this increased concentration could mean that each remaining clearing member becomes more important from the standpoint of systemic risk transmission.

In addition to benefits for bank clearing members, certain benefits resulting from QCCP status may also accrue to covered clearing agencies. If banks value lower capital requirements attributable to QCCP status, bank clearing members may prefer membership at QCCPs to membership at CCPs that are not QCCPs. A flight of clearing members from covered clearing agencies in the absence of QCCP status would result in default-related losses being mutualized across a narrower member base. Additionally, if the flight from covered clearing agencies results in lower transactional volume at these clearing agencies, then economies of scale may be lost, resulting in higher clearing fees and higher transaction costs in cleared products.

2. Effect on Competition, Efficiency, and Capital Formation

The amendments to Rule 17Ad–22 and Rule 17Ab2–2 have the potential to affect competition, efficiency, and capital formation. As with the rest of the benefits and costs associated with the amendments to Rule 17Ad–22, the Commission believes that several of the effects described below only occur to the extent that covered clearing agencies do not already have operations and governance mechanisms that conform to the requirements in Rule 17Ad–22(e). Additionally, the Commission believes that consistency with international regulatory frameworks, as embodied by the PFMI, which may promote the integrity of cleared markets, could have substantial effects on competition, efficiency, and capital formation.

a. Competition

Two important characteristics of the market for clearance and settlement services are high fixed costs and economies of scale. Large investments in risk management and information technology infrastructure costs, such as financial data database and network maintenance expenses, are components of high fixed costs for clearing agencies. Consequently, the clearance and settlement industry exhibits economies of scale in that the average total cost per transaction, which includes fixed costs, diminishes with the increase in transaction volume as high fixed costs are spread over a larger number of transactions.

Furthermore, high fixed costs translate into barriers to entry that

[693] The Commission notes that, at present, no bank in its sample of bank clearing members of OCC is bound by capital requirements under the BCBS capital framework. For U.S. bank holding companies, tier 1 capital ratios were collected from Y–9C reports available at the National Information Center, *https://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx*. For non-U.S. bank holding companies, Commission staff obtained corresponding data from financial statements and supplementary financial materials posted to bank Web sites. The Commission used data from 2013–2016 for its sample of U.S. bank clearing members, and from 2012–2015 for its sample of non-U.S. bank clearing members and assumed no bank-specific countercyclical capital buffers for these banks. This suggests a minimum tier 1 capital ratio of 10.1%, exceeding the BCBS minimum by 1.6%.

[694] This data has been taken from Compustat and from publicly available financial statements. Due to data limitations, for certain banks a shorter window was used for this calculation. The minimum sample window was six years.

[695] *See supra* note 45 and accompanying text (noting that banks supervised by the FRB and Office of the Comptroller of the Currency would treat covered clearing agencies as QCCPs for the purposes of calculating regulatory capital ratios).

preclude competition. Lower competition is an important source of market power for clearing agencies. As a result, clearing agencies possess the ability to exert market power and influence the fees charged for clearance and settlement services in the markets they serve.[696] Any costs resulting from the adopted amendments may have the effect of raising already high barriers to entry. 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.[697]

Even if they could not take advantage of a marginal increase in market power, clearing agencies may use their market power to pass any increases in costs that flow from the adopted amendments to their members. This may be especially true in the cases of member-owned clearing agencies, such as DTC, FICC, NSCC, and OCC, where members lack the opportunity to pass costs through to outside equity holders. Allowing clearing members to serve on the board of directors of a covered clearing agency may align a covered clearing agency's incentives with its membership. Certain complications may also arise, however, when clearing members sit on boards of covered clearing agencies as members of the board and may choose to allocate the costs of enhanced risk management inefficiently across potential competitors, in an effort to reduce their own share of these costs.

Members who are forced to internalize the costs of additional requirements under Rule 17Ad–22(e) may seek to terminate their membership. Additionally, prospective clearing members may find it difficult to join clearing agencies, given the additional costs they must internalize.[698] Remaining clearing members may gain market power as a result, enabling them to extract economic rents from their customers. Rent extraction could take the form of higher transaction costs in cleared markets, thereby reducing efficiency, as discussed below.

The Commission also acknowledges that Rule 17Ad–22(e)(19) may affect competition among firms that choose to become clearing members, and those who provide clearing services indirectly, through a clearing member. Monitoring and managing the risks associated with indirect participation in clearing may be costly. If monitoring and managing the risks associated with indirect participation in clearing proves costly for clearing agencies and if clearing agencies are able to pass the additional costs related to monitoring and managing risks to clearing members, it may cause marginal clearing members unable to absorb these additional costs to exit. While these exits may be socially efficient, since they reflect the internalization of costs otherwise imposed upon other participants in cleared markets through increased probability of clearing agency default, they may nevertheless result in lower competition among clearing members for market share, potentially providing additional market power to the clearing members that remain. Exits by clearing members could also reduce the resources available for customers to obtain replacement clearing services.

The Commission believes, however, that management of risks from indirect participation is important in mitigating the risks that clearing agencies pose to financial stability. The tiered participation risk exposures, including credit, liquidity, and operational risks inherent in indirect participation arrangements, may present risks to clearing agencies, their members, and to the broader financial markets. For instance, if the size of an indirect participant's positions is large relative to a clearing member's capacity to absorb risks, this may increase the clearing member's default risk. Consequently, a clearing agency with indirect participation arrangements may be exposed to the credit risk of an indirect participant through its clearing members. Similarly, a margin call on, or a default by, an indirect participant could constrain liquidity of its associated clearing members, making it more difficult for these members to manage their positions at the clearing agency.

The consistency across regulatory frameworks contemplated by the adopted rules may also affect competition. Financial markets in cleared products are global, encompassing many countries and regulatory jurisdictions. Consistency with international regulatory frameworks may facilitate entry of clearing agencies into new markets. By contrast, conflicting or duplicative regulation across jurisdictions, or even within jurisdictions, may cause competitive friction that inhibits entry and helps clearing agencies behave like local monopolists. Consistency in regulation can facilitate competition among clearing agencies so long as regulation is not so costly as to discourage participation in any market. Additionally, the Commission believes that Rule 17Ad–22(e)(23) may facilitate competition among clearing agencies across jurisdictions by requiring public disclosures that enable market participants to compare clearing agencies more easily.

The consistency across regulatory requirements contemplated by the adopted rules may affect competition among banks in particular. Clearing derivative and repurchase agreement transactions through QCCPs will result in lower capital requirements for banks under the BCBS capital framework. Therefore, consistency with the PFMI may allow banks that clear these products through covered clearing agencies to compete on equal terms with banks that clear through other clearing agencies accorded QCCP status. This effect potentially countervails higher barriers to entry that enhanced risk management standards may impose on clearing members by lowering the marginal cost of clearing these transactions. Furthermore, covered clearing agencies potentially compete with one another for volume from clearing members. Since clearing members receive better treatment for exposures against QCCPs, clearing members will find it less costly to deal with QCCPs. Failure to establish requirements consistent with the PFMI may place U.S. covered clearing agencies at a competitive disadvantage globally.

The ability of covered clearing agencies to obtain QCCP status may also affect competition among clearing agencies. Under the BCBS capital framework, QCCP status would have practical relevance only for covered clearing agencies providing CCP services for derivatives, security-based swaps, and securities financing transactions. To the extent that the adopted rules increase the likelihood that banking regulators that have implemented the BCBS capital framework in their jurisdiction recognize covered clearing agencies as QCCPs, banks that clear at covered clearing agencies will experience lower capital requirements. Since clearing agencies may compete for volume from clearing members that are also banks, the adopted rules may remove a competitive friction between covered clearing agencies and other clearing agencies that enjoy recognition as QCCPs by banking regulators. As a corollary, the adopted rules could potentially disadvantage any registered clearing agencies that are not covered

[696] *See, e.g.*, CCA Standards proposing release, *supra* note 5, at 29593.

[697] *See id.*

[698] *See supra* Part III.B.1.d (discussing concentration both in the market for clearing services and among clearing members).

clearing agencies.[699] The Commission also notes that the ability of registered clearing agencies to voluntarily apply for covered clearing agency status under Rule 17Ab2–2(a) may potentially allow entrants to achieve QCCP status if the Commission determines they should receive covered clearing agency status and they otherwise meet the requirements of the BCBS capital framework.

Further competitive effects may flow from the adoption as a result of the determinations under Rule 17Ab2–2 for clearing agencies engaged in activities with a more complex risk profile and clearing agencies that are systemically important in multiple jurisdictions. These entities will be responsible for maintaining additional financial resources sufficient to cover the default of the two participant families that would potentially cause the largest aggregate credit exposures in extreme but plausible market conditions as well as undertake an annual feasibility analysis for extending liquidity risk management from ''cover one'' to ''cover two.'' These clearing agencies will have to collect these resources from participants, either through higher margin requirements or guaranty fund contributions, or indirectly through third-party borrowing arrangements secured by member resources. Regardless of how clearing agencies obtain these additional resources, the requirement to do so potentially raises the costs to use services provided by covered clearing agencies. Moreover, these additional costs could raise barriers to entry in the market or to opt out of clearing altogether.

b. Efficiency

The amendments to Rule 17Ad–22 may affect efficiency in a number of ways, though as discussed previously, most of these effects will only flow to the extent that covered clearing agencies do not already comply with the amendments. First, because the amendments result in general consistency with the PFMI and requirements adopted by the CFTC and FRB, consistency likely fosters efficiency by reducing the risk that covered clearing agencies will be faced with conflicting or duplicative regulation when clearing financial products across multiple regulatory jurisdictions.

Consistency across regulatory regimes in multiple markets may also result in efficiency improvements. Fully integrated markets would allow clearing agencies to more easily exploit economies of scale because clearing agencies tend to have low marginal costs and, thus, could provide clearance and settlement services over a larger volume of transactions at a lower average cost. Differences in regulation, on the other hand, may result in market fragmentation, allowing clearing agencies to operate as local monopolists. The resulting potential for segmentation of clearing and settlement businesses along jurisdictional lines may lead to overinvestment in the provision of clearing services and reductions in efficiency as clearing agencies open and operate solely within jurisdictional boundaries. If market segmentation precludes covered clearing agencies from clearing transactions for customers located in another jurisdiction with a market too small to support a local clearing agency, fragmentation may result in under-provisioning of clearing and settlement services in these areas, in turn reducing the efficiency with which market participants share risk.

The amendments may also affect efficiency directly if they mitigate covered clearing agencies' incentives to underinvest in risk management and recovery and wind-down procedures. CCP default and liquidation is likely a costly event, so to the extent that the rules mitigate the risk of CCP default and prescribe rules for orderly recovery and wind-down, they will produce efficiency benefits. Another direct effect on efficiency may come if registered clearing agencies attempt to restructure their operations in ways that would allow them to fall outside of the scope of Rule 17Ad–22(e).

Finally, price efficiency and the efficiency of risk sharing among market participants may be affected by the amendments. On one hand, the cost of a transaction includes costs related to counterparty default that are typically unrelated to fundamental asset payoffs. Academic research using credit default swap transaction data has revealed a statistically significant, though economically small, relationship between the credit risk of a counterparty and the spreads implicit in transaction prices.[700] Enhanced risk management by clearing agencies may reduce this component of transaction costs. By reducing deviations of prices from fundamental value, the amendments may increase price efficiency. If lower transaction costs or reduced ambiguity facilitates participation in cleared markets by investors who would benefit from opportunities for risk-sharing in these markets,[701] then this transmission channel may result in more efficient allocation of risk. On the other hand, the amendments may have adverse implications for price efficiency in cleared markets if they drive up transaction costs as higher costs of risk management enter asset prices. An increase in transaction costs could cause certain market participants to avoid trading altogether, reducing liquidity in cleared products and opportunities for risk sharing among investors in these markets.

c. Capital Formation

The implications for capital formation that flow from the amendments to Rule 17Ad–22 and Rule 17Ab2–2 stem mainly from incremental costs that result from compliance with more specific standards and benefits in the form of more efficient risk sharing.

In cases where current practice falls short of the amendments, covered clearing agencies may have to invest in infrastructure or make other expenditures to come into compliance, which may divert capital from other uses. In line with our previous discussion of cost allocation in the market for clearing services, these resources may come from clearing members and their customers.[702]

At the same time, the Commission believes that the standards contemplated under the rules may foster capital formation. As mentioned earlier, clearing agencies that are less prone to failure may help reduce transaction costs in the markets they clear.[703] Conceptually, the component of transaction costs that reflects counterparty credit risk insures one counterparty against the default of

[699] *See supra* note 597 (noting that the Commission currently expects the lower capital treatment under the BCBS capital framework to affect registered clearing agencies FICC, ICEEU, and OCC, each of which would meet the definition of a ''covered clearing agency'' in Rule 17Ad–22(a)(5)).

[700] *See e.g.,* Navneet Arora, Priyank Gandhi & Francis Longstaff, Counterparty Credit Risk and the Credit Default Swap Market, 103 J. Fin. Econ. 280 (2012). Using transaction prices and quotes by 14 different CDS dealers, the authors identified how dealers' credit risk affects transaction prices. They observed a relationship between spreads and credit risk implying that a 645-basis-point increase in a dealer's credit spread would produce a one-basis-point increase in transaction prices. They explain the magnitude of this relationship by noting that their sample included transactions that were mostly collateralized, which would diminish the sensitivity of transaction prices to counterparty credit risk.

[701] If investors who might benefit from risk-sharing in cleared markets are ambiguity-averse, then regulation that addresses payoffs in times of financial strain may induce their participation. *See supra* note 669 and accompanying text.

[702] *See supra* Part III.B.1 (discussing the economic effects of the rules on the market for clearing services).

[703] *See supra* Part III.B.1.a (discussing the economic effects of the rules on systemic risk).

another.[704] Reductions in counterparty default risk allow the corresponding portion of transaction costs to be allocated to more productive uses by market participants who otherwise would bear these costs.

If, on balance, the adopted amendments cause transaction costs to decrease in cleared markets, then the expected value of trade may increase. Counterparties that are better able to diversify risk through participation in cleared markets may be more willing to invest in the real economy rather than choosing to engage in precautionary savings.

3. Effect of Amendments to Rule 17Ad–22 and Rule 17Ab2–2

The discussion below outlines the costs and benefits considered by the Commission as they relate to the rules being adopted today. These specific costs and benefits are in addition to the more general costs and benefits anticipated under the Commission's proposal discussed in Part III.B.1 and include, in particular, the costs and benefits stemming from the availability of QCCP status under the BCBS capital framework. Many of the costs and benefits discussed below are difficult to quantify. This is particularly true where clearing agency practices are anticipated to evolve and adapt to changes in technology and other market developments. The difficulty in quantifying costs and benefits of the adopted rules is further exacerbated by the fact that in some cases the Commission lacks information regarding the specific practices of clearing agencies that could assist in quantifying certain costs. For example, as noted in Part I.A.1.a.i(4), without detailed information about the composition of illiquid assets held by clearing agencies and their members, the Commission cannot provide reasonable estimates of costs associated with satisfying substantive requirements under Rules 17Ad–22(e)(7)(i) and (ii). Another example, discussed in Part I.A.1.a.i(5), is testing and validation of financial risk models, where the Commission is only able to estimate that costs will fall within a range. In this case, the costs associated with substantive requirements under the rules may depend on the types of risk models employed by clearing agencies, which are, in turn, dictated by the markets they serve. As a result, much of the discussion is qualitative in nature, though where possible, the costs and benefits have been quantified.

[704] *See supra* note 700.

a. Rule 17Ad–22(e)

The Commission recognizes that the scope of Rule 17Ad–22(e) is an important determinant of its economic effect. Having considered the anticipated costs and benefits associated with Rule 17Ad–22(e), the Commission believes Rule 17Ad–22(e) should apply to a ''covered clearing agency,'' as defined in Rule 17Ad–22(a)(5).[705] In particular, as discussed below, the Commission believes that an important benefit resulting from the enhanced risk management requirements in the rules is a reduction in the risk of a failure of a covered clearing agency. For example, these benefits may be significant due to the clearing agencies' size, exposure to, and interconnectedness with market participants, and the effect their failure may have on markets, market participants, and the broader financial system. For complex risk profile clearing agencies, significant benefits may flow as a result of their higher baseline default risk.

As an alternative, the Commission could have extended the scope of Rule 17Ad–22(e) to cover all registered clearing agencies. The Commission acknowledges, however, that clearing agencies are involved in differing products and markets that carry varying levels of risk. Further, the costs of compliance with the rules may represent barriers to entry for clearing agencies. By continuing to apply Rule 17Ad–22(d) to registered clearing agencies that are not covered clearing agencies, the Commission believes that the scope of Rule 17Ad–22(e) appropriately preserves the potential for the continuing development of the national system for clearance and settlement and maintains innovation in the operation of registered clearing agencies.[706]

i. Rule 17Ad–22(e)(1): Legal Risk

Because, as noted above, Rule 17Ad–22(e)(1) would require substantially the same set of policies and procedures as Rule 17Ad–22(d)(1),[707] the Commission believes that Rule 17Ad–22(e)(1) would likely impose limited material additional costs on covered clearing agencies and produce limited benefits, in line with the general economic considerations discussed in Part III.B.1.

ii. Rule 17Ad–22(e)(2): Governance

Each covered clearing agency has a board of directors that governs its operations and oversees its senior management. Rule 17Ad–22(e)(2) would establish more detailed requirements for governance arrangements at covered clearing agencies relative to those imposed on registered clearing agencies under Rule 17Ad–22(d)(8).[708]

The Commission understands that any covered clearing agency subject to the rule has policies and procedures in place that clearly prioritize the risk management and efficiency of the clearing agency. However, the Commission believes that covered clearing agencies do not already have in place policies and procedures with respect to other requirements under Rule 17Ad–22(e)(2). Based on its supervisory experience, the Commission believes that some covered clearing agencies may need to update their policies and procedures to comply with Rule 17Ad–22(e)(2)(iv). These updates will entail certain basic compliance costs, and covered clearing agencies may also incur assessment costs related to analyzing current governance arrangements to determine the extent to determine which they do not meet the requirements of the amendments. The estimated costs in terms of paperwork are discussed in Part IV. If, as a result of new policies and procedures, a covered clearing agency is required to recruit new directors, the Commission estimates a cost per director of $73,912.[709]

While there are potential costs associated with compliance, the Commission believes that benefits would potentially accrue from these requirements. Specifically, the Commission believes that enhanced governance arrangements would further promote safety and efficiency at the clearing agency—motives that may not be part of a clearing agency's governance arrangements in the absence of regulation. Policies and procedures required under Rule 17Ad–22(e)(2)

[705] *See* Part II.A.1.

[706] The Commission notes that under Rule 17Ab2–2(a), a registered clearing agency that is not involved in activities with a more complex risk profile and is not a designated clearing agency may apply for covered clearing agency status, which would subject them to the requirements of Rule 17Ad–22(e). The Commission believes that this may occur if the registered clearing agency believes such status may credibly signal the quality of the services it provides or if it is seeking to obtain QCCP status under the BCBS capital framework.

[707] *See supra* note 179; *supra* Part II.C.1 (discussing the full set of requirements under Rule 17Ad–22(e)(1)); *supra* Part III.A.2.a (discussing current practices among registered clearing agencies regarding legal risk); *see also* 17 CFR 240.17Ad–22(d)(1).

[708] *See supra* Part II.C.2 (discussing the full set of requirements under Rule 17Ad–22(e)(2)).

[709] The Commission estimated a cost per director of $68,000 in proposing Regulation MC. *See* Exchange Act Release No. 34–63107 (Oct. 14, 2010), 75 FR 65881, 65921 & n.215 (Oct. 26, 2010). The $73,912 estimate reflects this amount in 2015 dollars, using consumer price inflation data provided by the Bureau of Labor Statistics.

would also reinforce governance arrangements at covered clearing agencies by requiring board members and senior management to have appropriate experience and skills to discharge their duties and responsibilities.

Compliance with these requirements could reduce the risk that insufficient internal controls within a covered clearing agency endanger broader financial stability. While the benefits of compliance are difficult to quantify, the Commission believes that they flow predominantly from a reduced probability of covered clearing agency default.

iii. Rule 17Ad–22(e)(3): Comprehensive Framework for the Management of Risks

The Commission believes that Rule 17Ad–22(e)(3) would aid covered clearing agencies in implementing a systematic process to examine risks and assess the probability and impact of those risks.[710] Rule 17Ad–22(e)(3)(i) specifies that a risk management framework include policies and procedures reasonably designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency. Critically, these policies and procedures would be subject to review on a specified basis and approval by the board of directors annually. A sound framework for comprehensive risk management under regular review would have the benefits of providing covered clearing agencies with a better awareness of the totality of risks they face in the dynamic markets they serve. In addition, the requirement to have policies and procedures that provide for an independent audit committee of the board and that provide internal audit and risk management functions with sufficient resources, authority, and independence from management, as well as access to risk and audit committees of the board, would reinforce governance arrangements directly related to risk management at covered clearing agencies. A holistic approach to risk management could help ensure that policies and procedures that covered clearing agencies adopt pursuant to the rules work in tandem with one another. For example, such an approach could result in risk-based membership standards under Rule 17Ad–22(e)(18) that are consistent with policies and procedures related to the allocation of credit losses under Rule 17Ad–22(e)(13)(i). The Commission believes ensuring that a covered clearing agency's risk management activities fit within a unified framework could mitigate the risk of financial losses to covered clearing agencies' members and participants in the markets they serve.

Additionally, the rule extends requirements under Rules 17Ad–22(d)(4) and 17Ad–22(d)(11) by requiring plans for recovery and orderly wind-down.[711] To the extent that covered clearing agencies do not already have such plans in place, they would incur incremental costs to develop such plans. Recovery and resolution planning can benefit both clearing members and, more generally, participants in markets where products are cleared. Many of the costs and benefits of such plans depend critically on the specific recovery and wind-down tools that covered clearing agencies choose to include in their rules. The presence of such plans could reduce uncertainty over the allocation of financial losses to clearing members in the event that a covered clearing agency faces losses due to member default or for other reasons that exceed its prefunded default resources. Further, recovery and orderly wind-down plans that detail the circumstances under which clearing services may be suspended or terminated may mitigate the risk of market disruption in periods of financial stress. Market participants who face the possibility that the assets they trade may no longer be cleared and settled by a CCP may be unwilling to trade such assets at times when risk sharing is most valuable. While the effects are difficult to quantify, the Commission believes that recovery and orderly wind-down plans ensure that a covered clearing agency is able to remain resilient in times of market stress.

Based on its supervisory experience, the Commission believes that all covered clearing agencies have an independent audit committee of the board. The Commission further believes that most covered clearing agencies already have policies or procedures that may be relevant to issues arising in recovery and/or wind-down of clearing operations. As a result, the benefits and costs associated with these requirements will likely be limited to incremental changes associated with covered clearing agencies' review of such policies and procedures and further development of plans for recovery and orderly wind-down and to registered clearing agencies that become covered clearing agencies.

iv. Rules 17Ad–22(e)(4) through (7): Financial Risk Management

(1) Rule 17Ad–22(e)(4): Credit Risk

Rule 17Ad–22(e)(4) would establish requirements for credit risk management by covered clearing agencies.[712] Based on its supervisory experience, the Commission believes that all entities that would be covered clearing agencies are already in compliance with Rules 17Ad–22(e)(4)(i) through (iv). Pursuant to Rule 17Ad–22(b)(3), registered clearing agencies that provide CCP services currently maintain additional financial resources to meet the ''cover one'' requirement, and registered clearing agencies that would be complex risk profile clearing agencies under the adopted rules currently maintain financial resources to meet the ''cover two'' requirement.[713] All covered clearing agencies exclude resources that are not prefunded when calculating this coverage.[714] As a result, the Commission believes little or no additional direct costs or benefits will result from these requirements unless registered clearing agencies were to become covered clearing agencies and include resources that are not prefunded towards their resource requirements. The requirement to include only prefunded resources when calculating the financial resources available to meet the standards under Rules 17Ad–22(e)(4)(ii) and (iii) potentially reduces the risk that covered clearing agencies request financial resources from their members in times of financial stress, when members are least able to provide these resources.

While requiring ''cover two'' for complex risk profile clearing agencies and for covered clearing agencies designated systemically important in multiple jurisdictions would place additional requirements on the affected clearing agencies, the Commission believes that the requirement is appropriate because disruption to these entities due to member default carries relatively higher expected costs than for other covered clearing agencies. These relatively higher expected costs arise from the fact that covered clearing agencies designated systemically important in multiple jurisdictions are exposed to foreign financial markets and

[710] *See supra* Part II.C.3 (discussing the full set of requirements under Rule 17Ad–22(e)(3)).

[711] *See supra* Part II.C.3.b.iii (discussing the requirements for recovery and orderly wind-down plans under Rule 17Ad–22(e)(3)(ii)).

[712] *See supra* Part II.C.4 (discussing the full set of requirements under Rule 17Ad–22(e)(4)).

[713] The Commission also notes that no covered clearing agency would be systemically important in multiple jurisdictions unless and until the Commission made such a determination pursuant to Rule 17Ab2–2. *See supra* Part II.D (discussing the determinations process under Rule 17Ab2–2).

[714] *See supra* Part III.A.2.d.i (discussing current practices regarding credit risk management at registered clearing agencies).

may serve as a conduit for the transmission of risk; for complex risk profile clearing agencies, high expected costs may arise from discrete jump-to-default price changes in the products they clear and higher correlations in the default risk of members.[715]

Rule 17Ad–22(e)(4)(vi) and (vii) would also impose additional costs by requiring additional measures to be taken with respect to the testing of a covered clearing agency's financial resources and model validation of a covered clearing agency's credit risk models. These requirements do not currently exist as part of the standards applied to registered clearing agencies.[716] Covered clearing agencies may incur additional costs under expanded and more frequent testing of total financial resources if the formal requirement that results of monthly testing be reported to appropriate decision makers is a practice not currently used by covered clearing agencies. A range of costs for these new requirements is discussed in Part I.A.1.a.i(5).

Frequent monitoring and stress testing of total financial resources, model validations, and reporting of results of the monitoring and testing to appropriate personnel within the clearing agency could help rapidly identify any gaps in resources required to ensure stability, even in scenarios not anticipated on the basis of historical data. Moreover, the requirement to test and, when necessary, update the assumptions and parameters supporting models of credit risk will support the adjustment of covered clearing agency financial resources to changing financial conditions, and mitigate the risk that covered clearing agencies will strategically manage updates to their risk models in support of cost reduction or profit maximization.

The Commission believes that most covered clearing agencies will be required to update their policies and procedures as a result of Rules 17Ad–22(e)(4)(viii) and (ix). Clearing members may experience benefits from 17Ad–22(e)(4)(viii), which requires covered clearing agencies to provide disclosure to members regarding the allocation of default losses when these losses exceed the level of financial resource it has available. As a result of this additional transparency, clearing members may experience an improved ability to manage their expectations of potential obligations against the covered clearing agency, which may increase the likelihood of orderly wind-downs in the event of member default. Crafting such allocation plans by covered clearing agencies may entail certain compliance costs, as discussed further in Part III.B.3.d. Further, covered clearing agencies may allocate default losses in a number of ways that may themselves have implications for participation, competition, and systemic risk.[717] For example, if, as a part of a default resolution plan, selective tear-up is contemplated after a failed position auction, then clearing members who expect low loss exposure in the tear-up may not have adequate incentives to participate in the position auction, even if they are better able to absorb losses than clearing members who expect high exposure in the tear-up plan. This would increase the chances of a failed auction and the chances of a protracted and more disruptive wind-down. Thus, the total costs of any loss allocation plan may depend largely on the particular choices embedded in covered clearing agencies' plans.

Rule 17Ad–22(e)(4)(ix) contains new provisions related to the replenishment of financial resources that do not appear in Rule 17Ad–22(d)(11). The Commission believes that the rules related to replenishment of financial resources may reduce the potential for systemic risk and contagion in cleared markets, as they facilitate covered clearing agencies' prompt access to these resources in times of financial stress.

(2) Rule 17Ad–22(e)(5): Collateral

Rule 17Ad–22(e)(5) would require a covered clearing agency to have policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and to set and enforce appropriately conservative haircuts and concentration limits. Collateral haircut and concentration limit models would be subject to a not-less-than-annual review of their sufficiency.[718] Rule 17Ad–22(d)(3) currently requires registered clearing agencies to have policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or risk of delay in access to them and invest assets in instruments with minimal credit, market, and liquidity risk.

By focusing on the nature of assets and not on accounts, the Commission believes the adopted rule may allow covered clearing agencies the ability to manage collateral more efficiently. In particular, under the adopted rule, a covered clearing agency would have the option of accepting collateral that is riskier than cash and holding this collateral at commercial banks, potentially increasing default risk exposure. On the other hand, the requirement to regularly review concentration limits and haircuts mitigates the risk that a covered clearing agency's collateral policies fail to respond to changing economic conditions. Based on its supervisory experience, the Commission understands that all registered clearing agencies that would meet the definition of a covered clearing agency already conform to the requirements under the adopted rule related to the nature of assets they may accept as collateral and the haircuts and concentration limits they apply to collateral assets, so the associated costs and benefits that would result from these requirements would apply only if registered clearing agencies not already in compliance were to become covered clearing agencies.

As a result of the rule, these covered clearing agencies and registered clearing agencies that become covered clearing agencies may experience additional costs as a result of the annual review requirements for the sufficiency of collateral haircut and concentration limit models. Based on its supervisory experience, the Commission believes that many clearing agencies that require collateral would need to develop policies and procedures to review haircuts and concentration limits annually. Enforcement of the haircut requirement would also require additional resources. A range of costs for these new requirements is discussed in Part I.A.1.a.i(5). Adherence to these requirements by these entrants could extend the benefits of prompt loss coverage, incentive alignment, and systemic risk mitigation to a larger volume of cleared transactions.

(3) Rule 17Ad–22(e)(6): Margin

Rule 17Ad–22(e)(6) would require a covered clearing agency that provides CCP services to have policies and procedures reasonably designed to require it to cover credit exposures using a risk-based margin system and to establish minimum standards for such a system. It would require these policies and procedures to cover daily collection of variation margin. The rule also

[715] *Cf.* PFMI, *supra* note 2, at 43 (discussing Principle 4, Explanatory Note 3.4.19).

[716] Rule 17Ad–22(b)(4) requires a registered clearing agency's policies and procedures be reasonably designed to provide for an annual validation of its margin models and the related parameters and assumptions. *See* 17 CFR 240.17Ad–22(b)(4).

[717] *See, e.g.,* Elliot, *supra* note 616 (discussing various loss-allocation rules and CCP recovery and wind-down).

[718] *See supra* Part II.C.5 (discussing the full set of requirements under Rule 17Ad–22(e)(5)).

requires a set of policies and procedures generally designed to support a reliable margin system. Among these are policies and procedures to ensure the use of reliable price data sources and appropriate methods for measuring credit exposure, which could improve margin system accuracy. Finally, covered clearing agencies would be required to have policies and procedures related to the testing and verification of margin models.[719] Rules 17Ad–22(a)(6) and (14) support these requirements by addressing the means of verification for margin models and the level of coverage required of a margin system against potential future exposures, respectively. Based on its supervisory experience, however, the Commission understands that all current covered clearing agencies have policies and procedures that conform to the requirements under Rules 17Ad–22(e)(6)(i) through (v) and (vii), and some will have to update their policies and procedures to comply with Rule 17Ad–22(e)(6)(vi).

Similar to Rules 17Ad–22(e)(4) and (7), covered clearing agencies that do not already engage in backtesting of margin resources at least once each day or engage in a monthly analysis of assumptions and parameters, as well as registered clearing agencies that become covered clearing agencies in the future, may incur incremental compliance costs as a result of the adopted rule. Since margin plays a key role in clearing agency risk management, however, requiring that margin be periodically verified and modified as a result of changing market conditions may mitigate the risks posed by covered clearing agencies to financial markets in periods of financial stress. Further, periodic review of model specification and parameters reduces the likelihood that covered clearing agencies opportunistically update margin models in times of low volatility and fail to update margin models in times of high volatility. A range of costs for verification and modification of margin models is discussed in Part I.A.1.a.i(5). Further, since risk-based initial margin requirements may cause market participants to internalize some of the costs borne by the CCP as a result of large or risky positions,[720] ensuring that margin models are well-specified and correctly calibrated with respect to economic conditions will help ensure that they continue to align the incentives of clearing members with the goal of financial stability.

(4) Rule 17Ad–22(e)(7): Liquidity Risk

Rule 17Ad–22(e)(7) would require a covered clearing agency to have policies and procedures reasonably designed to effectively monitor, measure, and manage liquidity risk.[721] Parties to securities and derivatives transactions rely on clearing agencies for prompt clearance and settlement of transactions. Market participants in centrally cleared and settled markets are often linked to one another through intermediation chains in which one party may rely on proceeds from sales of cleared products to meet payment obligations to another party. If insufficient liquidity causes a clearing agency to fail to meet settlement or payment obligations to its members, consequences could include the default of a clearing member who may be depending on these funds to make a payment to another market participant, with losses then transmitted to others that carry exposure to this market participant if the market participant is depending on payments from the clearing members to make said payments to others. Therefore, the benefits related to liquidity risk management generally flow from the reduced risk of systemic risk transmission by covered clearing agencies as a result of liquidity shortfalls, either in the normal course of operation or as a result of member default.

Enhanced liquidity risk management may produce additional benefits. Clearing members would face less uncertainty over whether a covered clearing agency has the liquidity resources necessary to make prompt payments which would reduce any need to hedge the risk of nonpayment. Potential benefits from enhanced liquidity risk management may also extend beyond members of covered clearing agencies or markets for centrally cleared and settled securities. Clearing members are often members of larger financial networks, and the ability of a covered clearing agency to meet payment obligations to its members can directly affect its members' ability to meet payment obligations outside of the cleared market. Thus, management of liquidity risk may mitigate the risk of contagion between asset markets.

Based on its supervisory experience, the Commission believes that some covered clearing agencies would need to create new policies and procedures, or update existing policies and procedures, to meet requirements under the various subsections of Rule 17Ad–22(e)(7). These actions would entail compliance costs, as described in Part III.B.3.d. Further, the Commission believes that for some covered clearing agencies the adopted requirements would require them to establish new practices. The cost of adherence to the rule would likely be passed on to market participants in cleared markets, as discussed in more detail below.

Under Rule 17Ad–22(e)(7)(i), a covered clearing agency would be required to have policies and procedures reasonably designed to require maintaining sufficient resources to achieve ''cover one'' for liquidity risk. This requirement mirrors the ''cover one'' requirement for credit risk in Rule 17Ad–22(e)(4)(iii). Based on its supervisory experience, the Commission believes that many covered clearing agencies do not currently meet a ''cover one'' requirement for liquidity and thus will likely incur costs to comply with this rule. As discussed earlier, whether covered clearing agencies choose to gather liquidity directly from members or instead choose to rely on third-party arrangements, the costs of liquidity may be passed on to other market participants, eventually increasing transaction costs.[722] The requirement may, however, reduce the procyclicality of covered clearing agencies' liquidity demands, which may reduce costs to market participants in certain situations. For instance, the requirement would reduce the likelihood that a covered clearing agency would have to call on its members to contribute additional liquidity in periods of financial stress, when liquidity may be most costly.

Under Rule 17Ad–22(e)(7)(ii), a covered clearing agency would be required to have policies and procedures reasonably designed to ensure that it meets the minimum liquidity resource requirement in Rule 17Ad–22(e)(7)(i) with qualifying liquid resources.[723] Qualifying liquid resources would include cash held at the central bank or at a creditworthy commercial bank, assets that are readily converted into cash pursuant to committed lines of credit, committed foreign exchange swaps, committed

[719] *See supra* Part II.C.6 (discussing the full set of requirements under Rule 17Ad–22(e)(6)).

[720] *See, e.g.,* Philipp Haene & Andy Sturm, Optimal Central Counterparty Risk Management (Swiss Nat'l Bank Working Paper, June 2009) (addressing the tradeoff between margin and default fund, considering collateral costs, clearing member default probability, and the extent to which margin requirements are associated with risk mitigating incentives).

[721] *See supra* Part II.C.7 (discussing the full set of requirements under Rule 17Ad–22(e)(7)).

[722] *See supra* Part III.B.1.d (discussing the effect of the rules on concentration in the market for clearing services and among clearing members).

[723] *See* Rule 17Ad–22(a)(14), *infra* Part VI (defining ''qualifying liquid resources'').

repurchase agreements or other highly reliable prearranged funding agreements, or assets that may be pledged to a central bank in exchange for cash (if the covered clearing agency has access to routine credit at a central bank). The Commission notes that the adopted rules allow covered clearing agencies some measure of flexibility, subject to their obligations and responsibilities as SROs under the Exchange Act, to manage their qualifying liquid resources and that covered clearing agencies would be able to use creditworthy commercial bank services where appropriate.

Based on its supervisory experience, the Commission believes that some covered clearing agencies currently do not meet the liquidity requirements with qualifying liquid resources. As an alternative to the adopted rules, the Commission could have restricted the definition of qualifying liquid resources to assets held by covered clearing agencies. These covered clearing agencies and the markets they serve would benefit from the adopted minimum requirements for liquidity resources in terms of the reduced risk of liquidity shortfalls and associated contagion risks described above. However, qualifying liquid resources may be costly for covered clearing agencies to maintain on their own balance sheets. Such resources carry an opportunity cost. Assets held as cash are, by definition, not available for investment in less liquid assets that may be more productive uses of capital. This cost may ultimately be borne by clearing members who contribute liquid resources to covered clearing agencies to meet minimum requirements under Rule 17Ad–22(e)(7)(ii) and their customers.

The Commission notes that, under the adopted rules, covered clearing agencies have flexibility, subject to their obligations and responsibilities as SROs under the Exchange Act, to meet their qualifying liquid resource requirements in a number of ways. In perfect capital markets, maintaining on-balance-sheet liquidity resources should be no more costly than entering into committed lines of credit or prearranged funding agreements backed by less-liquid assets that would allow these assets to be converted into cash. However, market frictions, such as search frictions, may enable banks to obtain liquidity at lower cost than other firms. In the presence of such frictions, obtaining liquidity using committed and uncommitted funding arrangements provided by banks may prove a less costly option for some covered clearing agencies than holding additional liquid resources on their balance sheets. In particular, the Commission believes that requiring covered clearing agencies to enter into committed or uncommitted funding arrangements would decrease the costs that would be experienced by them in the event they sought to liquidate securities holdings during periods of market disruptions and increase the likelihood that they meet funding obligations to market participants by reducing the risk of delay in converting non-cash assets into cash.

The Commission notes that committed or uncommitted funding arrangements would only count towards minimum requirements to the extent that covered clearing agencies had securities available to post as collateral, so use of these facilities may require covered clearing agencies to require their members to contribute more securities. If these securities are costly for clearing members to supply, then additional required contributions to meet minimum requirements under Rule 17Ad–22(e)(7)(ii) may impose costs on clearing members and their customers. Similarly, prearranged funding arrangements may entail implicit costs to clearing members. Prearranged funding arrangements could impose costs on clearing members if they are obligated to contribute securities towards a collateral pool that the covered clearing agency would use to back borrowing. Alternatively, clearing members may be obligated under a covered clearing agency's rules to act as counterparties to repurchase agreements. Under the latter scenario, clearing members would bear costs associated with accepting securities in lieu of cash. Additionally, the Commission notes certain explicit costs specifically associated with these arrangements outlined below.

Counterparties to committed arrangements allowable under Rule 17Ad–22(a)(14) charge covered clearing agencies a premium to provide firm liquidity commitments and additional out-of-pocket expenses will be incurred establishing and maintaining committed liquidity arrangements. The Commission estimates that the total cost of committed funding arrangements will be approximately 30 basis points per year, including upfront fees, legal fees, commitment fees, and collateral agent fees.[724] Furthermore, the Commission is aware of other potential consequences of these arrangements. In some instances, they may cause entities outside of a covered clearing agency to bear risks ordinarily concentrated within the covered clearing agency, while, in others, these arrangements may result in increased exposure of covered clearing agencies to certain members.[725] Financial intermediaries that participate in committed credit facilities may be those least able to provide liquidity in times of financial stress, so these commitments may represent a route for risk transmission.[726] Finally, the Commission notes that covered clearing agencies may face constraints in the size of credit facilities available to them. Recent market statistics have estimated the total size of the committed credit facility market in the U.S. at $2.3 trillion with 15 of 3,740 facilities exceeding $10 billion in size.[727] Given the volume of activity at covered clearing agencies, it is possible that they may only be able to use committed credit facilities to meet a portion of their liquidity requirements under Rule 17Ad–22(e)(7)(ii).

A covered clearing agency may alternatively use a prearranged funding arrangement determined to be highly reliable in extreme but plausible market conditions to raise liquid resources backed by non-cash assets but that does not require firm commitments from liquidity providers. This strategy would avoid certain of the explicit fees associated with firm commitments, while incurring costs related to the annual review and maintenance of such arrangements. Based on its supervisory experience and discussions with market participants, the Commission believes the cost associated with commitment fees to be between 5 and 15 basis points per year. Given the 30 basis point cost associated with committed funding arrangements, mentioned above, uncommitted facilities could entail

[724] *See* Letter from Kim Taylor, President, CME Clearing, to Melissa Jurgens, Office of the Secretariat, CFTC (Sept. 16, 2013), at 13 & n.48 (noting CME's assumption that the cost of committed liquidity or committed repurchase facilities is approximately $3 million for every $1 billion of required committed facilities, including upfront fees, commitment fees, legal fees, and collateral agent fees).

[725] *See id.* at 11.

[726] *See* Letter from Robert C. Pickel, CEO, ISDA to Secretary, CFTC (Sept. 16, 2013), at 4 (discussing collateral and liquidity requirements); *see also* Craig Pirrong, Clearing and Collateral Mandates: A New Liquidity Trap?, 24 J. Applied Corp. Fin. 67 (2012).

[727] These estimates are based on the number of deals issued in 2015 as reported by the DealScan database from Thomson Reuters Markets LLC. Suspended and cancelled deals were omitted. U.S. deals were defined based on the country of the borrower's principal executive offices, as reported in DealScan, due to data availability. In cases of multiple facilities within the deal, the loan deal date is the earliest facility date. Estimates for corporate borrowers refer to non-financial private sector borrowers.

costs of between 15 and 25 basis points.[728] Prearranged funding arrangements may ultimately prove less costly than holding cash and may be more widely available than committed arrangements, while still reducing the likelihood of delay faced by covered clearing agencies that attempt to market less-liquid assets. As mentioned above in the context of committed credit facilities, the Commission acknowledges that financial institutions who offer to provide liquidity to covered clearing agencies on an uncommitted basis may be least able to do so in times of financial stress, when access to liquidity is most needed by the covered clearing agency. Without a commitment in place, counterparties retain the option to fail to provide liquidity during stressed conditions, when liquidity is most valuable to clearing agencies and the markets they serve. To the extent covered clearing agencies may establish requirements for clearing members to provide liquidity to ensure compliance with the Commission's adopted rules, the costs experienced by members indirectly may exceed those associated with committed credit facilities.

Finally, covered clearing agencies that have access to routine credit at a central bank could meet the qualifying liquid resources requirement with assets that are pledgeable to a central bank, if that jurisdiction permits such pledges or the transactions by the covered clearing agency. The Commission notes that this may represent the lowest cost option for covered clearing agencies, but understands that this latter provision would represent an advantage only if and when a covered clearing agency receives the benefit of access to routine central bank borrowing. The Commission anticipates that at such future time access to routine credit at a central bank would provide covered clearing agencies with additional flexibility, subject to their obligations and responsibilities as SROs under the Exchange Act, with respect to resources used to comply with the liquidity risk management requirements of Rules 17Ad–22(e)(7)(i) and (ii).

The total cost of maintaining qualifying liquid resources pursuant to Rules 17Ad–22(e)(7)(i) and (ii) is composed of the cost of each liquidity source including assets held by covered clearing agencies, committed credit facilities and prearranged funding agreements, multiplied by the quantity of each of these liquidity sources held by covered clearing agencies. The Commission is unable to quantify the cost of cash held by clearing agencies and securities required to back credit facilities since such estimates would require detailed information about additional required contributions of clearing members under the adopted rules, as well as clearing members' best alternative to holding cash and securities.[729] As mentioned above, however, the Commission has limited information about the costs associated with committed and uncommitted credit facilities. Based on this information, we are able to quantify the costs associated with committed credit facilities that will result from the requirement to maintain qualifying liquid resources. The Commission estimates that the cost of compliance with the adopted rules will be between $122 million and $204 million per year as a result of the requirement to enter into prearranged funding agreements for non-cash assets used to meet liquidity requirements under Rules 17Ad–22(e)(7)(i) and (ii). This analysis assumes that covered clearing agencies will enter into such agreements at arm's length on an uncommitted basis. Based on staff discussions with market participants, the Commission understands that alternative arrangements between covered clearing agencies and their members may be obtained at lower cost, though these arrangements may come with increased wrong-way risk.[730]

U.S. Treasury securities would not fall under the definition of qualifying liquid resources. The Commission understands that U.S. Treasury markets represent some of the largest and most liquid markets in the world, see Part III.A.2.k, and that, in ''flights to quality'' and ''flights to liquidity'' in times of financial stress, U.S. Treasuries trade at a premium to other assets.[731] If, as an alternative to the adopted rules, the Commission included U.S. government securities in the definition of qualifying liquid resources, the Commission estimates the cost of complying with requirements under Rule 17Ad–22(e)(7)(i) and (ii) would be reduced by between $32 million and $204 million per year.[732] The Commission believes,

[728] Subtracting the lower bound of commitment fees (5 basis points) from the estimated total cost of a committed facility (30 basis points) yields an estimate of the upper bound of the fees associated with an uncommitted facility (30 − 5 = 25 basis points). We estimate the lower bound of fees associated with an uncommitted facility analogously (30 − 15 = 15 basis points).

[729] Covered clearing agencies may choose to allocate the costs associated with increased liquidity requirements based on a number of factors related to the markets they serve and their membership. *See, e.g.,* Exchange Act Release No. 34–70999 (Dec. 5, 2013), 78 FR 75400 (Dec. 11, 2013) (Commission order approving NSCC rule change to institute supplemental liquidity deposits to its clearing fund designed to increase liquidity resources to meet its liquidity needs).

[730] To produce this range, the Commission used a combination of publicly available information from SRO rule filings, comment letters, and 2015 annual financial statements, and non-public information gathered as a result of its regulatory role. For each covered clearing agency, the Commission assumed that the covered clearing agency's guaranty fund represents the sole source of liquidity used to satisfy its minimum liquidity requirements under the adopted rules. To compute the level of qualifying liquid resources currently held by each covered clearing agency, the Commission assumed that cash in the covered clearing agency's guaranty fund remains fixed at current levels and added to this any amount from credit facilities that could be backed by the value of securities held in the covered clearing agency's guaranty funds.

Taking the sum of these current qualifying liquid resources over all covered clearing agencies and subtracting this from the sum of the ''cover one'' guaranty fund requirement over all covered clearing agencies results in the total shortfall relative to minimum requirements under Rules 17Ad–22(e)(7)(i) and (ii). The Commission further assumed that covered clearing agencies would cover this shortfall using prearranged funding agreements backed by additional securities posted to guaranty funds by clearing members. Finally, the Commission multiplied the total prearranged funding amount by between 0.15% and 0.25% to arrive at a range of ongoing costs.

This range estimate has been updated since the proposal. While it relies on the same methodology, this estimate relies on more recent financial information from covered clearing agencies. *Cf.* CCA Standards proposing release, *supra* note 5, at 29600.

[731] *See* Alessandro Beber, Michael W. Brandt & Kenneth A. Kavajecz, Flight-to-Quality or Flight-to-Liquidity? Evidence from the Euro-Area Bond Market, 22 Rev. Fin. Stud. 925 (2009) (decomposing sovereign yield spreads into credit and liquidity components and showing that credit quality matters for bond valuation but that, in times of market stress, investors chase liquidity, not quality); Markus K. Brunnermeier & Lasse Heje Pedersen, Market Liquidity and Funding Liquidity, 22 Rev. Fin. Stud. 2201 (2009) (showing, in a theoretical model, how with low wealth shocks, demand for illiquid assets falls off more sharply than demand for liquid assets); Francis A. Longstaff, The Flight-to-Liquidity Premium in U.S. Treasury Bond Prices, 77 J. Bus 511 (2004) (estimating the liquidity premium associated with U.S. Treasuries relative to close substitutes); Dimitri Vayanos Flight to Quality, Flight to Liquidity, and the Pricing of Risk (NBER Working Paper No. 10327, Feb. 2004) (showing, in a theoretical model, that during volatile times, assets' liquidity premia increase), *available at http://www.nber.org/papers/w10327.pdf.*

[732] The Commission re-estimated the level of prearranged funding agreements required to meet requirements under Rules 17Ad–22(e)(7)(i) and (ii) using the data and methodology described in note 730, except in this case the Commission assumed that all non-defaulting member resources applied to funding obligations were a mix of cash and U.S. Treasuries for a lower bound, and assumed that all resources applied to funding obligations were a mix of cash and U.S. Treasuries for an upper bound.

Taking the sum of these current qualifying liquid resources over all covered clearing agencies and subtracting this from the sum of cover one guaranty fund requirement over all covered clearing agencies results in the total shortfall relative to minimum requirements under Rules 17Ad–22(e)(7)(i) and (ii) if U.S. government and agency securities were considered qualifying liquid resources. As above, the Commission further assumed that covered clearing agencies would cover this shortfall using

however, that there are benefits to including government securities only if prearranged funding agreements exist. In particular, given the quantity of these securities financed by the largest individual dealers, fire-sale conditions could materialize if collateral is liquidated in a disorderly manner, which could prevent covered clearing agencies from meeting payment obligations.[733]

Rule 17Ad–22(e)(7)(iii) requires a covered clearing agency to establish implement, maintain and enforce written policies and procedures reasonably designed to ensure it uses accounts and services at a Federal Reserve Bank or other relevant central bank, when available and where determined to be practical by the board of directors, to enhance its management of liquidity risk.[734] The Commission believes that it may be beneficial for covered clearing agencies to use central bank account services because doing so would reduce exposure to commercial bank default risk. Moreover, for some covered clearing agencies, central bank services may represent the lowest-cost admissible funding arrangement under the adopted rule. The Commission understands, however, that central bank services may not be practical because direct access to central bank accounts and services may not be available to all clearing agencies or members in all circumstances.

Rules 17Ad–22(e)(7)(iv) and (v) address relations between covered clearing agencies and their liquidity providers. The Commission believes that a key benefit of these adopted rules would be an increased level of assurance that liquidity providers would be able to supply liquidity to covered clearing agencies on demand. Such assurance is especially important because of the possibility that covered clearing agencies may rely on outside liquidity providers to convert non-cash assets into cash using prearranged funding arrangements or committed facilities, pursuant to Rule 17Ad–22(e)(7)(ii) and the definition of qualifying liquid resources in Rule 17Ad–22(a)(14). The required policies and procedures would ensure the covered clearing agency undertakes due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers understand the liquidity risk borne by the liquidity provider, and that the liquidity provider would have the capacity to provide liquidity under commitments to the covered clearing agency. Finally, covered clearing agencies would be required, under the adopted rule, to maintain and test the covered clearing agency's procedures and operational capacity for accessing liquidity under their agreements. The Commission believes that, besides the costs associated with new or updated policies and procedures discussed in Part IV.C, covered clearing agencies and liquidity providers may experience costs associated with the adopted rules as a result of the requirement to test liquidity resources, such as, for example, fees associated with conducting test draws on a covered clearing agency's credit lines. Costs associated with ongoing monitoring and compliance related to testing are included in the Commission's estimate of quantifiable costs presented in Part III.B.3.d.

Rules 17Ad–22(e)(7)(vi) and (vii) may impose costs on covered clearing agencies as a result of requirements for testing the sufficiency of liquidity resources and validating models used to measure liquidity risk. The testing and model validation requirements of these adopted rules are similar to requirements for testing and model validation for credit risk in Rules 17Ad–22(e)(4)(vi) and (vii), and the Commission believes that these adopted rules would yield similar benefits. Frequent monitoring and testing liquidity resources could help rapidly identify any gaps in resources required to meet payment obligations. Moreover, the requirement to test and, when necessary, update the assumptions and parameters supporting models of liquidity risk will support the adjustment of covered clearing agency liquidity resources to changing financial conditions and mitigate the risk that covered clearing agencies will strategically manage updates to their liquidity risk models in support of cost-reduction or profit-maximization.

Rule 17Ad–22(e)(7)(viii) addresses liquidity shortfalls at a covered clearing agency, and the Commission believes the adopted rule would reduce ambiguity related to settlement delays in the event of liquidity shocks. Among other things, by requiring procedures that seek to avoid delay of settlement payments, this adopted rule would require covered clearing agencies to address liquidity concerns in advance rather than relying on strategies of delaying accounts payable in the event of liquidity shocks. As discussed previously, effective liquidity risk management by covered clearing agencies that serves to eliminate uncertainty on the part of clearing members that payments by the covered clearing agency will be made on time may allow these clearing members to allocate their liquidity resources to more efficient uses than holding precautionary reserves.[735] The Commission believes the rule may reduce some of the flexibility covered clearing agencies have in the absence of the rule, which could impose additional costs on these clearing agencies as discussed in Part III.B.1.b.

Rule 17Ad–22(e)(7)(ix) would require a covered clearing agency to have policies and procedures reasonably designed to describe its process for replenishing any liquid resources that it may employ during a stress event.[736] The ability to replenish liquidity resources is critical to ensure that covered clearing agencies are able to continue operations after a stress event. Beyond the general benefits associated with liquidity risk management noted earlier, this adopted rule would yield particular benefits insofar as it would reduce uncertainty about covered clearing agency liquidity resources at precisely those times when information about liquidity may be most important to market participants.

Finally, Rule 17Ad–22(e)(7)(x) would require a covered clearing agency that provides CCP services and is either systemically important in multiple jurisdictions or is a clearing agency involved in activities with a more complex risk profile to conduct a feasibility analysis for ''cover two.'' [737] The primary cost associated with this rule will be an annual analysis by the affected covered clearing agencies. Costs associated with a feasibility study would likely include the cost of staffing and consulting, which will depend on the scope of products cleared and the particular approach taken by each covered clearing agencies. The costs associated with this requirement are included in Part III.B.3.d.

prearranged funding agreements backed by additional securities posted to guaranty funds by clearing members and multiplied this amount by between 0.15% and 0.25% to arrive at a range of ongoing costs.

As above, this range estimate has been updated since the proposal. While it relies on the same methodology, this estimate relies on more recent financial information from covered clearing agencies. *Cf.* CCA Standards proposing release, *supra* note 5, at 29601.

[733] *See* Brian Begalle et al., The Risk of Fire Sales in the Tri-Party Repo Market, at 19 & n.37 (FRBNY Staff Report No. 616, May 2013), *available at http://www.newyorkfed.org/research/staff_reports/sr616.pdf.*

[734] *See* Rule 17Ad–22(e)(7)(iii), *infra* Part VI.

[735] *See supra* Part III.B.2.b.

[736] *See* Rule 17Ad–22(e)(7)(ix), *infra* Part VI.

[737] *See* Rule 17Ad–22(e)(7)(x), *infra* Part VI.

(5) Testing and Validation of Risk Models

Rules 17Ad–22(e)(4) through (7) include requirements for covered clearing agencies to have policies and procedures reasonably designed to test and validate models related to financial risks. Covered clearing agencies may incur additional costs under expanded and more frequent testing of financial resources if the requirements for testing and validation do not conform to practices currently used by covered clearing agencies.[738] These costs are composed of two portions. The first encompasses startup costs related to collection and storage of data elements necessary to implement testing and validation, along with investments in software tools and human capital to support these functions. The second portion of costs includes the ongoing, annual costs of conducting testing and validation under the adopted rules.

Based on its supervisory experience and discussions with industry participants, the Commission believes that startup costs to support testing and validation of credit risk, margin, and liquidity risk models at covered clearing agencies could fall in the range of $5 million to $25 million for each covered clearing agency. This range primarily reflects investments in information technology to process data already available to covered clearing agencies for stress testing and validation purposes. The range's width reflects differences in markets served by, as well as the scope of operations of, each covered clearing agency. Based on its supervisory experience and discussions with industry participants, the Commission estimates a lower bound of $1 million per year for ongoing costs related to testing of risk models.

Should each covered clearing agency choose to hire external consultants for the purposes of performing model validation required under Rules 17Ad–22(e)(4) and 17Ad–22(e)(7) through written policies and procedures, the Commission estimates the ongoing cost associated with hiring such consultants would be approximately $4,509,120 in the aggregate.[739]

The Commission acknowledges that it could have, as an alternative, rules that would require testing and validation of financial risk models at covered clearing agencies at different frequencies. For example, the Commission could have required backtesting of margin resources less frequently than daily. Such a policy could imply less frequent adjustments in margin levels that may result in over- or under-margining. The Commission believes that the frequencies of testing and validation of financial risk models that it has adopted are appropriate given the risks faced by covered clearing agencies and current market practices related to frequency of meetings of risk management committees and boards of directors at covered clearing agencies.

v. Rules 17Ad–22(e)(8) Through (10): Settlement and Physical Delivery

Rules 17Ad–22(e)(8) through (10) require covered clearing agencies to have policies and procedures reasonably designed to address settlement risk. Many of the issues raised by settlement are similar to those raised by liquidity. Uncertainty in settlement may make it difficult for clearing members to fulfill their obligations to other market participants within their respective financial networks if they hold back precautionary reserves, as discussed above. Based on its supervisory experience, the Commission believes that the benefits and costs for the majority of covered clearing agencies will likely be limited. Registered clearing agencies that become covered clearing agencies in the future, by contrast, may bear more significant costs as a result of the enhanced standards.

Settlement finality is important to market participants for a number of reasons. Reversal of transactions can be costly to participants. For example, if transactions are reversed, buyers and sellers of securities may be exposed to additional market risk as they attempt to reestablish desired positions in cleared products. Similarly, reversal of transactions may render participants expecting to receive payment from the covered clearing agency unable to fulfill payment obligations to their counterparties, exposing these additional parties to the transmitted credit risk. Finally, settlement finality can help facilitate default management procedures by covered clearing agencies since they improve transparency of members' positions. Unless settlement finality is established by covered clearing agencies, market participants may attempt to hedge reversal risk for themselves. This could come at the cost of efficiency if it means that, on the margin, participants are less likely to use cleared products as collateral in other financial transactions.

In addition, settlement in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency, as the adopted rules would require, greatly reduces settlement risk related to payment agents. Using central bank accounts to effect settlement rather than settlement banks removes a link from the intermediation chain associated with clearance and settlement. As a result, a covered clearing agency would be less exposed to the default risk of its settlement banks. In cases where settlement banks maintain links to other covered clearing agencies, for example as liquidity providers or as members, reducing exposure to settlement bank default risk may be particularly valuable.

As in the case of Rule 17Ad–22(e)(7)(iii), the Commission acknowledges there may be circumstances where it is appropriate for covered clearing agencies to use commercial banks for conducting money settlements even when comparable services are available from a central bank. Accordingly, the Commission believes it is appropriate to allow covered clearing agencies flexibility, subject to their obligations and responsibilities as SROs under the Exchange Act, to also use commercial bank account services to effect settlement, subject to a requirement that covered clearing agencies monitor and manage the risks associated with such arrangements.

vi. Rule 17Ad–22(e)(11): CSDs

CSDs play a key role in modern financial markets. For many issuers, many transactions in their securities involve no transfer of physical certificates.

Paperless trade generally improves transactional efficiency. Book-entry transfer of securities may facilitate conditional settlement systems required by Rule 17Ad–22(e)(12). For example, book-entry transfer in a delivery versus payment system allows securities to be credited to an account immediately upon debiting the account for the payment amount. Institutions and individuals may elect to no longer hold and exchange certificates that represent

[738] The Commission notes that while the stress testing provisions in Rules 17Ad–22(e)(4) through (7) include new requirements for covered clearing agencies, Rule 17Ad–22(b)(4) requires registered clearing agencies that provide CCP services for security-based swaps to have policies and procedures for a general margin model validation requirement. *See supra* note 716.

[739] This figure was calculated as follows: 2 Consultants for 40 hours per week at $653 per hour = $52,240 × 12 weeks = $644,160 per clearing agency × 7 covered clearing agencies = $4,509,120. The $671 per hour figure for a consultant was calculated using *www.payscale.com*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

The Commission previously estimated that ongoing costs associated with hiring external consultants to fulfill the requirements of Rule 17Ad–22(b)(4) would be approximately $3.9 million per year. *See* Clearing Agency Standards adopting release, *supra* note 5, at 66261.

their ownership of securities. An early study showed that the creation of DTC resulted in a 30–35% reduction in the physical movement of certificates.[740] Among other benefits, to the extent that delays in exchanging paper certificates result in settlement failures, immobilization and dematerialization of shares reduces the frequency of these failures.[741]

For markets to realize the transactional benefits of paperless trade, however, requires confidence that CSDs can correctly account for the number of securities in their custody and for the book entries that allocate these securities across participant accounts. To realize these benefits, the rules also require covered CSDs to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the integrity of securities issues, minimize the risks associated with transfer of securities, and protect assets against custody risk. Based on its supervisory experience, the Commission believes that registered CSDs already have infrastructure in place to meet these requirements. However, CSDs may face incremental compliance costs in instances where they must modify their rules to implement appropriate controls. Compliance costs may be higher for potential new CSDs that are determined to be covered clearing agencies in the future.

vii. Rule 17Ad

22(e)(12): Exchange-of-Value Settlement Systems

Clearance and settlement of transactions between two parties to a trade involves an exchange of one obligation for another. Regarding transactions in securities, these claims can be securities or payments for securities. A particular risk associated with transactions is principal risk, which is the risk that only one obligation is successfully transferred between counterparties. For example, in a purchase of common stock, a party faces principal risk if, despite successfully paying the counterparty for the purchase, the counterparty may fail to deliver the shares.

The adopted requirements under Rule 17Ad–22(e)(12) are substantially the same as those in Rule 17Ad–22(d)(13).[742] As a result, covered clearing agencies that have been in compliance with Rule 17Ad–22(d)(13) face no substantially new requirements under Rule 17Ad–22(e)(12). The Commission expects the adopted rule would likely impose limited material additional costs on covered clearing agencies. It would also produce benefits in line with the general economic considerations discussed in Part III.B.1. The economic effects may differ for registered clearing agencies that become covered clearing agencies in the future.

viii. Rule 17Ad–22(e)(13): Participant-Default Rules and Procedures

Rule 17Ad–22(e)(13) requires covered clearing agencies to have policies and procedures for participant default with additional specificity relative to current requirements for registered clearing agencies under Rule 17Ad–22(d)(11). In particular, Rule 17Ad–22(e)(13) requires policies and procedures that address the testing and review of default procedures.

Based on its supervisory experience, the Commission believes all covered clearing agencies currently test and review default procedures at least annually, so the costs of this requirement would apply only to registered clearing agencies that may become covered clearing agencies in the future. The Commission also believes that broad–based participation in the testing of default procedures could reduce disruption to cleared markets in the event of default. However, to the extent that testing of these procedures requires participation by members of covered clearing agencies, members' customers, and other stakeholders, these parties may bear costs under the rules. The Commission is unable to quantify the economic effects of participation in these tests at this time.

As an alternative to the rules, the Commission could have adopted more prescriptive requirements for default procedures at covered clearing agencies. The Commission believes that differences in cleared assets and in the characteristics of clearing members supports allowing each covered clearing agency flexibility, subject to its obligations and responsibilities as an SRO under the Exchange Act, to determine its own default procedures pursuant to Rule 17Ad–22(e)(13).

ix. Rule 17Ad–22(e)(14): Segregation and Portability

Rule 17Ad–22(e)(14) applies only to a covered clearing agency that is either a security-based swap clearing agency or a complex risk profile clearing agency. It requires such a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions, and effectively protect such positions and related collateral from the default or insolvency of that participant.[743]

Segregation and portability of customer positions serves a number of useful purposes in certain cleared markets. In the normal course of business, the ability to efficiently identify and move an individual customer's positions and collateral between clearing members enables customers to easily terminate a relationship with one clearing member and initiate a relationship with another. This may facilitate competition between clearing members by ensuring customers are free to move their accounts from one clearing member to another based on their preferences, without being unduly limited by operational barriers.[744]

Segregation and portability may be especially important in the event of participant default. By requiring that customer collateral and positions remain segregated, covered clearing agencies can facilitate, in the event of a clearing member's insolvency, the recovery of customer collateral and the movement of customer positions to one or more other clearing members. Further, portability of customer positions may facilitate the orderly wind down of a defaulting member if customer positions may be moved to a non-defaulting member. Porting of positions in a default scenario may yield benefits for customers if the alternative is closing-out positions at one clearing

[740] *See* Neal L. Wolkoff & Jason B. Werner, The History of Regulation of Clearing in the Securities and Futures Markets, and Its Impact on Competition, 30 Rev. Banking & Fin. L. 313, 323 (2010).

[741] *See* Commission, Study of Unsafe and Unsound Practices of Brokers and Dealers, H.R. Doc. No. 231, 92nd Cong., 1st Sess. 13, at 168 (1971) (suggesting that the delivery and transfer process for paper certificates were a principal cause of failures to deliver and receive during the ''paperwork crisis'' of the late 1960s).

[742] *See supra* Part II.C.13 (discussing the full set of requirements under Rule 17Ad–22(e)(13)); *supra* Part III.A.2.g (discussing current practices among registered clearing agencies regarding exchange-of-value settlement systems); *see also* 17 CFR 240.17Ad–22(d)(13).

[743] *See supra* Part II.B.14.a (discussing applicability of Rule 17Ad–22(e)(14) and the existing rules for the cash securities and listed options markets applicable to broker-dealers which already promote segregation and portability to protect customer positions and funds in those markets).

[744] *See, e.g.,* Paul Klemperer, Competition When Consumers Have Switching Costs: An Overview with Applications to Industrial Organization, Macroeconomics, and International Trade, 62 Rev. Econ. Stud. 515 (1995) (presenting an overview of switching costs and their effects on competition).

member and reestablishing them at another clearing member. The latter strategy would cause customers to bear transactions costs, which might be especially high in times of financial stress.

The Commission notes that, in its view, for those clearing agencies to which Rule 17Ad–22(e)(14) applies, these adopted rules are flexible in their approach to implementing segregation and portability requirements. The most efficient means of implementing these requirements may depend on the products that a covered clearing agency clears as well as other business practices at a covered clearing agency. For example, a clearing agency's decision whether or not to collect margin on a gross or net basis may bear on its decision to port customer positions and collateral on an individual or omnibus basis, and while an individual account structure may provide a higher degree of protection from a default by another customer, it may be operationally and resource intensive for a covered clearing to implement and may reduce the efficiency of its operations. Moreover, some clearing agencies may already employ the LSOC model for segregation and portability of customer positions in security-based swaps because of existing CFTC requirements for swaps.

As a result, the costs and benefits of Rule 17Ad–22(e)(14) will depend on specific rules implemented by covered clearing agencies as well as how much these rules differ from current practice. Based on its supervisory experience, the Commission believes that the current practices at covered clearing agencies to which the rule would apply already meet segregation requirements under the rule, so any costs and benefits for covered clearing agencies would flow from implementing portability requirements, though the rule potentially raises a barrier to entry for security-based swap clearing agencies or clearing agencies involved in activities with a more complex risk profile that seek to become covered clearing agencies.

x. Rule 17Ad–22(e)(15): General Business Risk

While Rules 17Ad–22(e)(4) and 17Ad–22(e)(7) require that covered clearing agencies have policies and procedures reasonably designed to address credit risk and liquidity risk, Rule 17Ad–22(e)(15) requires that covered clearing agencies have policies and procedures reasonably designed to address general business risk. The Commission believes that general business losses experienced by covered clearing agencies represent a distinct risk to cleared markets, given limited competition and specialization of clearing agencies. In this regard, the loss of clearing services due to general business losses would likely result in major market disruption. The rule requires a covered clearing agency to have policies and procedures reasonably designed to mitigate the risk that business losses result in the disruption of clearing services. Under these policies and procedures covered clearing agencies would hold sufficient liquid resources funded by equity to cover potential general business losses, which at a minimum would constitute six months of operating expenses. The Commission believes that the benefits of such policies and procedures would flow primarily from covered clearing agencies that would be required to increase their holdings of liquid net assets funded by equity, enabling them to sustain their operations for sufficient time and achieve orderly wind–down if such action is eventually necessary.

The Commission could have adopted a higher or lower minimum level of resources, for example, corresponding to one quarter of operating expenses or one year of operating expenses. The Commission believes, however, that the rules, as adopted, afford covered clearing agencies sufficient flexibility, subject to their obligations and responsibilities as SROs under the Exchange Act, to determine the level of resources to hold while maintaining a minimum standard that supports continued operations in the event of general business losses. As another alternative, the Commission could have allowed covered clearing agencies additional flexibility to determine the nature of the financial resources held to mitigate the effects of general business risk or the means by which these resources are funded. The Commission believes, however, that by specifying that these resources be liquid in nature, the rule would limit any delays by covered clearing agencies that suffer business losses from paying expenses required for continued operations. Additionally, by specifically requiring that a covered clearing agency draw liquid net resources from members as equity capital, the rules may also encourage members to more closely monitor the business operations of a covered clearing agency, which may reduce the likelihood of losses.

Based on its supervisory experience, the Commission believes that certain covered clearing agencies would be required to establish and maintain policies and procedures providing for specified levels of equity capital and higher levels of liquid net assets as a result of Rule 17Ad–22(e)(15).[745] However, the Commission believes that based on current market practices, covered clearing agencies may not bear substantial costs to implement these policies and procedures. Table 2 contains summary information from five registered clearing agencies obtained from quantitative disclosures made by these registered clearing agencies pursuant to the PFMI.[746] These disclosures suggest that all five of these registered clearing agencies each currently hold more net liquid assets funded by equity than would be required to cover six months of operating expenses. While similar quantitative disclosures are not currently published by DTC, DTC does publish an annual disclosure framework pursuant to the PFMI,[747] which states that as of June 30, 2014, DTC maintained liquid net assets funded by equity in an amount exceeding six months of its projected operating expenses.[748] This analysis suggests that based on available information about liquid net assets funded by equity operating expenses, covered clearing agencies would not be required to raise additional equity capital to implement these policies and procedures with respect to net liquid assets.

TABLE 2—NET LIQUID ASSETS FUNDED BY EQUITY AND OPERATING EXPENSES AT REGISTERED CLEARING AGENCIES[749]

	FICC	ICC	ICEEU	NSCC	OCC
Value of liquid net assets funded by equity	214	53	358	321	247

[745] Additional equity capital may be raised through share issuance or by retaining earnings.

[746] *See supra* note 41.

[747] *See id.*

[748] *See* The Depository Trust Company Disclosure under the Principles for Financial Market Infrastructures (Dec. 2015), at 80, *available at http://www.dtcc.com/legal/policy-and–compliance.*

TABLE 2—NET LIQUID ASSETS FUNDED BY EQUITY AND OPERATING EXPENSES AT REGISTERED CLEARING AGENCIES [749]—Continued

	FICC	ICC	ICEEU	NSCC	OCC
Six months of current operating expenses	77	23	138	144	243

However, the Commission acknowledges that policies and procedure adopted by covered clearing agencies pursuant to Rule 17Ad–22(e)(15) may nevertheless result in certain costs for covered clearing agencies. First, covered clearing agencies would incur ongoing costs to implement, maintain, and enforce policies and procedures under Rule 17Ad–22(e)(15). To the extent that maintenance and enforcement of these policies and procedures indicate that additional capital is required to manage a covered clearing agency's general business risks, it may determine that it needs to increase liquid net assets. Second, as a result of these new policies and procedures, covered clearing agencies will have less control over their capital structures, as by implementing these policies and procedures they would be compelled to maintain a certain minimum level of liquid net assets despite the availability of new, less liquid, investment opportunities. Absent market frictions, such a change in capital structure should have no effect on the value of a covered clearing agency.[750] Nevertheless, the Commission acknowledges that market imperfections such as asymmetric information, moral hazard, and regulation may imply that covered clearing agencies that would need to raise additional equity capital incur opportunity costs for holding this additional capital rather than investing it in projects or distributing it back to equity holders who might, in turn, invest in projects.

Clearing agencies that issue equity to satisfy the new requirements would additionally face costs related to issuance. The Commission recognizes that the cost of maintaining additional equity resembles an insurance premium against the losses associated by market disruption in the absence of clearing services.

xi. Rule 17Ad–22(e)(16): Custody and Investment Risks

Rule 17Ad–22(e)(16) requires a covered clearing agency to have policies and procedures reasonably designed to safeguard both their own assets as well as the assets of participants, broadening the requirement applicable to registered clearing agencies in Rule 17Ad–22(d)(3) to the protection of participants' assets.

The Commission believes that this may have benefits in terms of protecting against systemic risk, to the extent that covered clearing agencies to this point have treated their own assets differently by applying greater safeguards to those assets than with respect to assets of their members and members' clients. Protection of member assets is important to cleared markets because, for example, the assets of a member in default serve as margin and represent liquidity supplies that a covered clearing agency may access to cover losses. If covered clearing agencies can quickly access these liquidity sources, they may be able to limit losses to non-defaulting members.

Participants may benefit from Rule 17Ad–22(e)(16) in other ways. Requiring a covered clearing agency's policies and procedures to safeguard its assets and participant assets and to invest in assets with minimal credit, liquidity, and market risk may reduce uncertainty in the value of participant assets and participants' exposure to mutualized losses. This may allow participants to deploy their own capital more efficiently. Furthermore, easy access to their own capital enables members to more freely terminate their participation in covered clearing agencies.

Based on its supervisory experience, the Commission believes that current practices at covered clearing agencies meet the requirements under Rule 17Ad–22(e)(16) in most cases, so the additional costs and benefits flowing from these requirements would be generally limited to registered clearing agencies that may enter the set of covered clearing agencies in the future.

xii. Rule 17Ad–22(e)(17): Operational Risk Management

Because, as noted above, Rule 17Ad–22(e)(17) would require substantially the same set of policies and procedures as Rule 17Ad–22(d)(4),[751] the Commission believes that Rule 17Ad–22(e)(17) would likely impose limited material additional costs on covered clearing agencies and produce limited benefits, in line with the general economic considerations discussed in Part III.B.1.

xiii. Rules 17Ad–22(e)(18) Through (20): Membership Requirements, Tiered Participation, and Linkages

As discussed earlier, covered clearing agencies play an important role in the markets they serve. They often enjoy a central place in financial networks that enables risk sharing, but may also enable them to serve as conduits for the transmission of risk throughout the financial system. Rules (18) through (20) require covered clearing agencies to have policies and procedures reasonably designed to explicitly consider and manage the risks associated with the particular characteristics of their network of direct members, the broader community of customers, and other parties that rely on the services provided by the covered clearing agencies or other partners that the covered clearing agency is connected to through relevant linkages. The Commission believes that these efforts carry benefits insofar as they reduce the extent to which covered clearing agencies may impose negative externalities on financial markets.

As economies of scale contribute to the business dynamics of clearing and settlement, there is often only one clearing agency or a small number of clearing agencies for a particular class of security. Consequently, membership in a clearing agency may influence competitive dynamics between members and indirect participants, such as intermediaries, in cleared markets.

[749] The figures in Table 2 are based on quantitative disclosures published by registered clearing agencies pursuant to the PFMI. Figures for FICC and NSCC were obtained from CPMI IOSCO Quantitative Disclosure Results—2016 Q1 (June 30, 2016), available at *http://www.dtcc.com/legal/policy-and–compliance*; figures for OCC were obtained from PFMI Quantitative Disclosure (Mar. 31, 2016), available at *http://www.optionsclearing.com/components/docs/about/corporate-information/pfmi-disclosures/quant-disclosure-janmar2016.pdf*; figures for Ice Clear Europe were obtained from ICE Clear Europe—CDS (2016 Q1) available at *https://www.theice.com/clear-europe/regulation#quantitative-disclosures*; and figures for ICE Clear Credit were obtained from Regulatory Disclosures (2016 Q1) available at *https://www.theice.com/clear-credit/regulation*.

[750] *See* Franco Modigliani & Merton H. Miller, The Cost of Capital, Corporation Finance and the Theory of Investment, 48 a.m. Econ. Rev. 261 (1958) (showing the irrelevance of capital structure in perfect markets).

[751] *See supra* Part II.C.17 (discussing the full set of requirements under Rule 17Ad–22(e)(17)); *see also* 17 CFR 240.17Ad–22(d)(4).

Members and indirect participants may compete for the same set of customers, but indirect participants must have relationships with members to access clearing services. Members, therefore, may have incentives in place to extract economic rents from indirect participants by imposing higher fees or restricting access to clearing services.

Permitting fair and open access to clearing agencies and their services may promote competition among market participants and may result in lower costs and efficient clearing and settlement services. Open access to clearing agencies may reduce the likelihood that credit and liquidity risk become concentrated among a small number of clearing members, each of which retain a large number of indirect participants through tiered arrangements. Further, links between clearing agencies may facilitate risk management across multiple security classes and improve the efficiency of collateral arrangements.

(1) Rule 17Ad–22(e)(18): Member Requirements

While fair and open access to clearing agencies may promote competition and enhance the efficiency of clearing and settlement services, these improvements should not come at the expense of prudent risk management. The soundness of clearing members contributes directly to the soundness of a clearing agency and mutualization of losses within clearing agencies expose each clearing member to the default risk of every other clearing member. Accordingly, it is important for clearing agencies to control and effectively manage the risks to which they are exposed by their direct and indirect participants by establishing risk-related requirements for participation.

Based on its supervisory experience, the Commission believes that current practices among most covered clearing agencies involve a mix of objective financial and business requirements stipulated in publicly-available rulebooks and discretion exercised by the covered clearing agency. As a result and based on its supervisory experience, the Commission believes that some changes to policies and procedures at covered clearing agencies may be required under the rule.

(2) Rule 17Ad–22(e)(19): Tiered Participation Arrangements

The Commission believes that Rule 17Ad–22(e)(19) may improve covered clearing agencies' ability to manage their exposure to market participants that are not clearing members, but access payment, clearing, or settlement facilities through their relationships with clearing members. A covered clearing agency that is able to effectively manage its exposure to its members but fails to identify, monitor, and manage its exposures to non-member firms may overlook dependencies that are critical to the stability of cleared markets. This is particularly true if indirect participants in the covered clearing agency are large and might potentially precipitate the default of one or more direct members.

The data necessary to compute summary statistics that would be helpful in quantifying the costs and benefits of the rule, including those that would indicate the size of indirect participants and the volume of transactions in which they are involved, are not available. Nevertheless, the Commission is sensitive to the fact that costs associated with the rules may result in concentration of clearing services among fewer clearing members. Part of this process of consolidation may mean an increase in the volume of trading activity that involves indirect members, making identification of risks associated with indirect members even more critical. Based on its supervisory experience, however, the Commission believes that certain covered clearing agencies already have policies and procedures in place that would satisfy the requirements of the rule even in the absence of such explicit requirements under existing rules. Costs and benefits from the rule would come from those other registered clearing agencies that require updates to their policies and procedures to come into compliance with the rule.

The Commission is sensitive to the fact that indirect participants play a key role in maintaining competition in markets for intermediation of trading in securities insofar as they offer investors a broader choice of intermediaries to deal with in centrally cleared and settled securities markets. If elements of policies and procedures under this rule make indirect participation marginally more costly, then transactions costs for investors may increase.

(3) Rule 17Ad–22(e)(20): Links

Links between clearing agencies and their members are only one way that clearing agencies interface with the financial system. A clearing agency may also establish links with other clearing agencies and FMUs through a set of contractual and operational arrangements. For a clearing agency, the primary purpose of establishing a link would be to expand its clearing and settlement services to additional financial instruments, markets, and institutions. Established links among clearing agencies and FMUs may enable direct and indirect market participants to have access to a broader spectrum of clearing and settlement services.

Sound linkages between clearing agencies that provide CCP services may also provide their customers with more efficient collateral arrangements and cross-margining benefits. Cross-margining potentially relaxes liquidity constraints in the financial system by reducing total required margin collateral. Resources that would otherwise be posted as margin may be allocated to more productive investment opportunities.

A clearing agency that establishes a link or multiple links may also impose costs on participants in markets it clears by indirectly exposing them to systemic risk from linked entities. The Commission acknowledges that clearing agencies that form linkages may be exposed to additional risks, including credit and liquidity risks, as a consequence of these links. Links may, however, produce benefits for members to the extent that diversification and hedging across their combined portfolio reduces their margin requirements. At the same time, because such an agreement requires the linked clearing agencies to each guarantee cross-margining participants' obligations to the other clearing agency, cross-margining potentially exposes members of one clearing agency to default risk from members of the other.

By requiring that covered clearing agencies have policies and procedures reasonably designed to identify, monitor, and manage risks related to any link, Rule 17Ad–22(e)(20), like Rule 17Ad–22(d)(7), reduces the likelihood that such links serve as channels for systemic risk transmission. Because Rule 17Ad–22(e)(20) differs only marginally from Rule 17Ad–22(d)(7), the Commission believes that the costs and benefits flowing from the adopted rule will be incremental, to the extent that the additional specificity in Rule 17Ad–22(e)(20) causes covered clearing agencies to modify current practices. The Commission has aggregated these costs below.

xiv. Rule 17Ad–22(e)(21): Efficiency and Effectiveness

Rule 17Ad–22(e)(21) would impose on covered clearing agencies requirements in addition to those currently applied to registered clearing agencies under Rule 17Ad–22(d)(6) by also requiring covered clearing agencies to have policies and procedures that ensure that a covered clearing agency's

management review efficiency and effectiveness in four key areas:

- Efficiency and effectiveness in clearing and settlement arrangements may reduce participants' transaction costs and enhance liquidity by reducing the amount of collateral that customers must provide for transactions and the opportunity cost associated with providing such collateral. Where appropriate, net settlement arrangements can reduce collateral requirements. Similarly, clearing arrangements that include a broad scope of products enable clearing members to take advantage of netting efficiencies across positions.
- Efficient and effective operating structures, including risk management policies, procedures, and systems, may reduce the likelihood of failures that may lead to impairment of a clearing agency's capacity to complete settlement and interfering with its ability to monitor and manage credit exposures.
- An efficient scope of products that a clearing agency clears, settles, or records may provide its participants and customers with more efficient collateral arrangements and cross-margining benefits that ultimately reduce transaction costs and improve liquidity in cleared markets.
- Efficient and effective use of technology and communication procedures facilitates effective payment, clearing and settlement, and recordkeeping.

The Commission believes that requirements related to the efficient and effective operation of covered clearing agencies are appropriate given the market power enjoyed by these entities, as discussed in Part III.B.1.d. Limited competition in the market for clearing services may blunt incentives for covered clearing agencies to provide high quality services at low cost to market participants in the absence of regulation.

Based on its supervisory experience, the Commission believes that some covered clearing agencies would be required to make updates to their policies and procedures as a result of the rule. As a result, the Commission expects incremental costs and benefits to flow from the adopted rule only to the extent that this additional specificity causes covered clearing agencies to modify current practices.

xv. Rule 17Ad–22(e)(22): Communication Procedures and Standards

Based on its supervisory experience, the Commission believes that some changes to policies and procedures would be necessary to meet requirements under Rule 17Ad–22(e)(22).[752] These costs are included as a part of implementation costs, as discussed below. However, the Commission understands that covered clearing agencies already accommodate internationally accepted communication procedures and standards and anticipates only incremental costs resulting from the rule, in addition to the above discussed benefits. Registered clearing agencies that may become covered clearing agencies in the future may need to conform their practices to internationally accepted communication procedures and standards, as well as adopt new policies and procedures as a result of the rule, resulting in more substantial costs.

xvi. Rule 17Ad–22(e)(23): Disclosure of Rules, Key Procedures, and Market Data

Enhanced disclosure may also improve the efficiency of transactions in cleared products and improve financial stability more generally by improving the ability of members of covered clearing agencies to manage risks and assess costs. Additional information would reduce the potential for uncertainty on the part of clearing members regarding their obligations to covered clearing agencies. Rule 17Ad–22(e)(23) requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to require specific disclosures. As in Rules 17Ad–22(d)(9) and (11), covered clearing agencies would be required under Rule 17Ad–22(e)(23) to disclose default procedures to the public and disclose sufficient information to participants to allow them to manage the risks, fees, and other material costs associated with membership.

Under Rule 17Ad–22(e)(23), a covered clearing agency must establish, implement, maintain and enforce written policies and procedures reasonably designed to update, on a biannual basis, public disclosures that describe the covered clearing agency's market and activities, along with information about the agency's legal, governance, risk management, and operating frameworks, including specifically covering material changes since the last disclosure, a general background on the covered clearing agency, a rule-by-rule summary of compliance with Rules 17Ad–22(e)(1) through (22), and an executive summary. The rule adds a new requirement, relative to existing requirements for registered clearing agencies under Rule 17Ad–22(d)(9), to update the disclosure biannually and to include, among other things, specific data elements, including details about system design and operations, transaction values and volumes, average intraday exposure to participants, and statistics on operational reliability.

Additional transparency may have benefits for participants and cleared markets more generally. For example, if information about the systems that support a covered clearing agency is public, investors may be more certain that the market served by this agency is less prone to disruption and more accommodating of trade. Furthermore, public disclosure of detailed operating data may facilitate evaluation of each covered clearing agency's operating record by market participants. Further, under Rule 17Ad–22(e)(23)(iv), these disclosures would be made about specific categories related to the compliance with Rule 17Ad–22(e) that potentially facilitate comparisons between covered clearing agencies. Additional availability of information on operations may increase the likelihood that clearing agencies compete to win market share from participants that value operational stability. This additional market discipline may provide additional incentives for covered clearing agencies to maintain reliability. Finally, updating the public disclosure every two years or more frequently following certain changes as required pursuant to Rule 17Ad–22(e)(23)(v) would support the benefits of enhanced public disclosures by ensuring that information provided to the public remains up-to-date. The Commission believes this would reduce the likelihood that market participants are forced to evaluate covered clearing agencies on the basis of stale data.

Clearing members, in particular, may benefit from additional disclosure of risk management and governance arrangements. These details potentially have significant bearing on clearing members' risk management because they may remove uncertainty surrounding members' potential obligations to a covered clearing agency. In certain circumstances, additional disclosures may reveal to members that the expected costs of membership exceed the expected benefits of membership, and that exit from the clearing agency may be privately optimal. In addition to the costs of concentration among members discussed in earlier sections, the Commission also recognizes the potential for systemic benefits from termination. Member exit on the basis of

[752] *See supra* Part II.C.22 (discussing the full set of requirements under Rule 17Ad–22(e)(22)).

more precise information may reduce the risk posed to other financial market participants by members who, given additional information, might prefer to terminate their membership, due to an inability to manage the risks to which a covered clearing agency exposes them. While exit from clearing agencies may have consequences for competition among clearing members, the Commission believes that encouraging the participation of firms that are not able to bear the risks of membership is not an appropriate means of mitigating the effects of market power on participants in cleared markets.

While it is possible that some covered clearing agencies will require changes to policies and procedures as a result of the adopted rules, the Commission believes that the effect of Rule 17Ad–22(e)(23) will not have a substantial impact on compliance costs because covered clearing agencies already gather data and information for preparing their responses to the PFMI quantitative disclosures, which are updated semiannually.

b. Rule 17Ab2–2

Rule 17Ab2–2 provides procedures for the Commission to determine whether a covered clearing agency is systemically important in multiple jurisdictions or has a complex risk profile and therefore should be subject to stricter risk management standards under Rule 17Ad–22(e). The Commission intends for Rule 17Ab2–2 to provide the Commission with discretion to consider those criteria relevant to the facts and circumstances of a registered clearing agency when subject to a determination.

Rule 17Ab2–2(a) includes criteria the Commission may consider in determining whether a covered clearing agency is systemically important in multiple jurisdictions. These criteria are based on input from a set of other bodies comprised of FSOC and regulators in other jurisdictions. As a result, it is possible that the flow of costs and benefits from Rule 17Ad–22(e) may be partially determined by the decisions of other regulatory bodies.

Rule 17Ab2–2(b), includes criteria that the Commission may use to determine that a clearing agency has a complex risk profile. For example, the Commission may consider the extent to which the clearing agency clears financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults.

Indirect effects of the determination process may have important economic effects on the ultimate volume of clearing activity, beyond the economic effects of the proposed requirements themselves. An important feature of Rule 17Ab2–2 is providing transparency for the determinations process. Transparency may allow a registered clearing agency to plan for resulting obligations under Rule 17Ad–22(e).

To the extent that Rule 17Ad–22(e) may increase costs for a covered clearing agency relative to its peers, such clearing agency may have incentives to restructure its business to avoid a Commission determination or otherwise exit any services made prohibitively expensive by such a determination. Such potential consequential effects would be among the considerations for the Commission to review in connection with any specific decision under Rule 17Ab2–2. Restructuring may involve spinning off business lines into separate entities, limiting the scope of clearing activities to certain markets, or limiting the scale of clearing activities within a single market. Any of these outcomes could result in inefficiencies. As discussed in Part III.B.1.c, registered clearing agencies may incur costs as a result of restructuring. Registered clearing agencies that break up along product lines or fail to consolidate when consolidation is efficient may fail to take advantage of economies of scope and result in inefficient use of collateral. Similarly, clearing agencies that limit their scale may provide lower levels of clearing services to the markets that they serve.

The impact of adopting Rule 17Ab2–2, which can affect the application of Rule 17Ad–22(e), could have direct costs on covered clearing agencies in the form of legal or consulting costs incurred as a result of seeking a determination from the Commission. In instances where these clearing agencies choose to apply to the Commission for status under Rule 17Ab2–2, the Commission believes that a registered clearing agency's voluntary application would suggest that the applicant's private benefits from enhanced requirements under Rule 17Ad–22(e) as a result of the Commission's determination that it is systemically important in multiple jurisdictions justify its costs. Quantifiable costs related to determinations under Rule a17Ab2–2 are noted in Part III.B.3.d.

In response to a comment about establishing a process for a covered clearing agency to be removed from that status, the Commission has decided to adopt such procedures in Rule 17Ab2–2(c). Specifically, if a clearing agency no longer meets the determination of covered clearing status, it can apply to be removed. This ability to remove the enhanced requirements can facilitate a clearing agency's ability innovate or enter new markets. Collectively, this could support the continued development of the national system for clearance and settlement.

c. Rule 17Ad–22(f)

Rule 17Ad–22(f) includes a provision that specifies Commission authority over designated clearing agencies for which it is the supervisory agency. Since this provision codifies existing statutory authority, the Commission does not anticipate any economic effects from this rule.

d. Quantifiable Costs and Benefits

As discussed above, the amendments to Rule 17Ad–22 and Rule 17Ab2–2 would impose certain costs on covered clearing agencies. As discussed in Part III.B.3.a.ii, if a covered clearing agency is required to recruit new directors, the Commission estimates a cost per director of $73,912.[753] As discussed in Part I.A.1.a.i(4), the Commission estimates costs associated with liquidity resources under Rules 17Ad–22(e)(7) and (a)(15) would likely fall between $122 million and $204 million per year across all covered clearing agencies. As discussed in Part I.A.1.a.i(5), the Commission believes that startup costs related to financial risk management systems for existing covered clearing agencies, related to new testing and model validation requirements to be between $5 million to $25 million. The Commission also estimates a lower bound on ongoing costs related to these requirements of $1 million per year. If covered clearing agencies were to hire external consultants for the purposes of performing model validation required under Rules 17Ad–22(e)(4) and (7) through policies and procedures, the Commission estimates the ongoing cost associated with hiring such consultants would be about $4,509,120 in the aggregate.[754]

In addition, Rules 17Ad–22(e)(3), (4), (6), (7), (15) and (21) all include elements of review by either a covered clearing agency's board or its management on an ongoing basis. The Commission estimates the cost of ongoing review for these adopted rules at approximately $39,376 per year.[755]

[753] *See supra* note 709.

[754] *See supra* Part I.A.1.a.i(5), in particular note 739.

[755] To monetize the cost of board review, the Commission used a recent 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. As a proxy for the cost

The rules would also impose certain implementation burdens and related costs on covered clearing agencies.[756] These costs generally include assessment costs to determine compliance with the adopted rules and costs related to new policies and procedures and updates to existing policies and procedures required by the rules. In Part IV.C, the Commission estimates the burdens of these implementation requirements for covered clearing agencies.

For a new entrant into the set of covered clearing agencies from the set of registered clearing agencies, the Commission estimates the startup compliance costs associated with policies and procedures to be $592,215,[757] and compliance costs associated with the determinations process under Rule 17Ab2–2 to be $7,764.[758] Based on its supervisory experience, the Commission believes that in many cases registered clearing agencies are already in compliance with many of the requirements included in the rules, so this cost represents an upper bound on upfront costs. Conditioned on its current understanding of current market practice at covered clearing agencies, the Commission estimates that the total costs across all existing covered clearing agencies will be $4,268,075.[759] The Commission estimates that in the aggregate existing covered clearing agencies would be subject to ongoing costs associated with the rule in the amount of approximately $926,603 per year.[760]

A benefit of the rules that the Commission is able to quantify is the impact of QCCP status of OCC to non-U.S. bank clearing members at OCC. This benefit comes as a result of lower capital requirements against exposures to QCCPs relative to non-qualifying CCPs. In Part III.B.1.e, the Commission provided an estimate of the upper bound of this benefit, $1.2 billion per year, or 0.73% of the aggregate 2015 net income reported by bank clearing members at OCC. The Commission believes that the actual benefits flowing from QCCP status would likely be higher due to benefits for foreign bank members of FICC and ICEEU, in addition to the benefits with respect to OCC discussed above.[761]

The Commission believes that the rules will result in an increase in financial stability insofar as they result in minimum standards at covered clearing agencies that are higher than those standards implied by current practices at covered clearing agencies. Some of this increased stability may come as a result of lower activity as the adopted rules cause participants to internalize a greater proportion of the costs that their activity imposes on the financial system, reducing the costs of default, conditional on a default event occurring. Increased stability may also come as a result of higher risk management standards at covered clearing agencies that effectively lower the probability that either covered clearing agencies or their members default.

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.'' [762] 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 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.[763]

Certain provisions of Rule 17Ad–22(e) impose new 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 collection of information under Rule 17Ad–22 to account for new Rule 17Ad–22(e), the Commission will use the same title and control number: ''Clearing Agency Standards for Operation and Governance,'' OMB Control No. 3235–0695. Since Rule 17Ab2–2 contains a new collection of information requirement, the title and control number are ''Determinations Affecting Covered Clearing Agencies,'' OMB Control No. 3235–0728.

The Commission provided notice of the below PRA estimates in the CCA Standards proposing release and

of management review, the Commission is estimating $461 per hour, based upon the Director of Compliance cost data from the SIFMA table, *see infra* note 756. The Commission estimates the total cost of review for each clearing agency as follows: ((Board Review for 32 hours at $1000 per hour) + (Management Review for 16 hours at $461 per hour)) = $39,376.

[756] To monetize the internal costs the Commission staff used data from the SIFMA publications, Management and Professional Earnings in the Security Industry—2013, and Office Salaries in the Securities Industry—2013, modified by the Commission staff 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. These figures have been adjusted for inflation using data published by the Bureau of Labor Statistics. Commission staff also estimated an hourly rate for a Chief Financial Officer. The Web site *www.salary.com* reports that median CFO annual salaries in 2016 were $306,789. A Grant Thornton LLP survey estimated that in 2016 public company CFOs will receive an average annual salary of $303,975. Using an approximate midpoint of these two estimates of $305,000 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 $906 per hour.

[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 $440 per hour) + (Compliance Attorney for 365 hours at $334 per hour) + (Administrative Assistant for 2 hours at $76 per hour) + (Computer Operations Department Manager for 300 hours at $416 per hour) + (Senior Business Analyst for 85 hours at $259 per hour) + (Senior Risk Management Specialist for 114 hours at $338 per hour) + (Chief Compliance Office for 102 hours at $501 per hour) + (Senior Programmer for 53 hours at $313 per hour) + (Chief Financial Officer for 50 hours at $906 per hour) + (Financial Analyst for 70 hours at $259 per hour)) = $626,850.

[758] The total cost associated with determinations under Rule 17Ab2–2 was calculated as follows: ((Assistant General Counsel for 2 hours at $440 per hour) + (Compliance Attorney for 3 hours at $300 per hour) + (Outside Counsel for 5 hours at $400 per hour)) × 2 registered clearing agencies = $7,764.

[759] The total initial cost was calculated as follows: ((Assistant General Counsel for 2,906 hours at $440 per hour) + (Compliance Attorney for 2,475 hours at $334 per hour) + (Administrative Assistant for 14 hours at $76 per hour) + (Computer Operations Department Manager for 2,030 hours at $416 per hour) + (Senior Business Analyst for 565 hours at $259 per hour) + (Senior Risk Management Specialist for 773 hours at $338per hour) + (Chief Compliance Office for 699 hours at $501 per hour) + (Senior Programmer for 361 hours at $313 per hour) + (Chief Financial Officer for 350 hours at $906 per hour) + (Financial Analyst for 490 hours at $259 per hour) + (Intermediate Accountant for 15 hours at $162 per hour)) = $4,268,075.

[760] The total ongoing cost was calculated as follows: ((Compliance Attorney for 1,851 hours at $334 per hour) + (Administrative Assistant for 137 hours at $76 per hour) + (Senior Business Analyst for 151 hours at $259 per hour) + (Senior Risk Management Specialist for 70 hours at $338 per hour) + (Risk Management Specialist for 1,251 hours at $188 per hour)) = $926,603.

[761] *See supra* note 689 and accompanying text.

[762] *See* 44 U.S.C. 3501 *et seq.;* 44 U.S.C. 3502(3).

[763] *See* 44 U.S.C. 3507(a)(1)(D); *see also* 5 CFR 1320.5(a)(1)(iv).

received no comments in response.[764] As discussed further below, the Commission has modified the final PRA estimates to account for the modifications to Rules 17Ad–22(e) and 17Ab2–2 described in Part II and to Rule 17Ad–22(c)(1) described in Part I.C.3.

A. Summary of Collection of Information and Use of Information

Below is a summary of the collection of information and the use of information for Rules 17Ad–22(e) and 17Ab2–2. The Commission received no comments regarding the summary or the use of information. In addition, because the Commission is modifying Rule 17Ad–22(c)(1) in response to comments addressed above, Rule 17Ad–22(c)(1) is also discussed below.[765] The Commission notes that the policies and procedures 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.

1. Rule 17Ad–22(e)(1)

As proposed, Rule 17Ad–22(e)(1) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. The Commission is adopting Rule 17Ad–22(e)(1) as proposed.[766]

The purpose of this information collection is to reduce the potential for legal risk at covered clearing agencies, such as the risk that participants face legal uncertainty due to a lack of clarity or completeness regarding conflicts with applicable laws.

2. Rule 17Ad–22(e)(2)

As proposed, Rules 17Ad–22(e)(2)(i) through (iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency, and support the public interest requirements in Section 17A of the Exchange Act and the objectives of owners and participants. Proposed Rule 17Ad–22(e)(2)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements establishing that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities.[767]

The Commission is adopting Rule 17Ad–22(e)(2) with two modifications, as previously discussed in Part II.C.2.c. First, the Commission is adding new paragraph (v) to require policies and procedures that specify clear and direct lines of responsibility. The Commission believes that clearly delineating lines of responsibility will help foster accountability of the board of directors and senior management, a concern expressed by commenters. The Commission also believes that this requirement complements the requirements in Rule 17Ad–22(e)(iv) addressing the qualifications of the board and management.[768] Second, the Commission is adopting new paragraph (vi) to require a covered clearing agency's governance arrangements to consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency. The Commission believes that the comments received in response to Rule 17Ad–22(e)(2), at a general level, express concern as to whether a covered clearing agency will have governance arrangements sufficiently robust to incorporate the views of the relevant stakeholders and to withstand the influence of potentially improper incentives. The Commission believes that this modification helps mitigate these concerns by adding a requirement to consider the interests of the relevant stakeholders. The Commission also believes that they complement the other requirements in Rule 17Ad–22(e)(2) and flow from the existing requirements in Section 17A of the Exchange Act, in particular the fair representation, investor protection, and public interest requirements discussed previously.[769]

The purpose of this information collection is to prioritize the safety and efficiency of covered clearing agencies, to help ensure that each covered clearing agency's governance arrangements consider the interests of the relevant stakeholders, to promote the establishment of boards of directors at covered clearing agencies that are composed of qualified members with clear and direct lines of responsibility, and to promote accountability of the board of directors and senior management.

3. Rule 17Ad–22(e)(3)

As proposed, Rule 17Ad–22(e)(3) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency. Proposed Rule 17Ad–22(e)(3)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, and subject them to review on a specified periodic basis and approval by the board of directors annually. Proposed Rule 17Ad–22(e)(3)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it establishes plans for the recovery and orderly wind–down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses. Proposed Rule 17Ad–22(e)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide risk management and internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors. Proposed Rule 17Ad–22(e)(3)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide risk management and internal audit personnel with oversight by and a direct reporting line to a risk management committee and an audit committee of the board of directors, respectively. Proposed Rule 17A–22(e)(3)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an independent audit committee.

The Commission is adopting Rule 17Ad–22(e)(3) with one modification. To make clear that the audit committee described in Rule 17Ad–22(e)(3)(iv) and the independent audit committee described in Rule 17Ad–22(e)(3)(v) are

[764] *See* CCA Standards proposing release, *supra* note 5, at 29560–75.

[765] *See supra* Part I.C.3.

[766] *See supra* Part II.C.1.

[767] *See supra* Part II.C.2.

[768] *See supra* Part II.C.2.b.iii.

[769] *See supra* Part II.C.2.c.

not separate audit committees, the Commission is adding ''independent'' before audit committee in Rule 17Ad–22(e)(3)(iv).[770]

The purpose of this information collection is to enhance each covered clearing agency's ability to identify, monitor, and manage the risks that covered clearing agencies face, including by subjecting the relevant policies and procedures to regular review, and to facilitate an orderly recovery and wind–down process in the event that a covered clearing agency is unable to continue operating as a going concern.

4. Rule 17Ad–22(e)(4)

As proposed, Rule 17Ad–22(e)(4) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes.

Proposed Rule 17Ad–22(e)(4)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. Proposed Rule 17Ad–22(e)(4)(ii) would require a covered clearing agency that provides CCP services, and that is ''systemically important in multiple jurisdictions'' or ''a clearing agency involved in activities with a more complex risk profile,'' to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources, to the extent not already maintained pursuant to proposed Rule 17Ad–22(e)(4)(i), at a minimum level necessary to enable it to cover a wide range of foreseeable stress scenarios, including but not limited to the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions (hereinafter the ''cover two'' requirement). Meanwhile, proposed Rule 17Ad–22(e)(4)(iii) would require a covered clearing agency that is not subject to proposed Rule 17Ad–22(e)(4)(ii) to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources, to the extent not already maintained pursuant to proposed Rule 17Ad–22(e)(4)(i), at the minimum to enable it to cover a wide range of foreseeable stress scenarios, including the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions (hereinafter the ''cover one'' requirement). Proposed Rule 17Ad–22(e)(4)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to include prefunded financial resources, excluding assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating the financial resources available to meet the standards under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable. Proposed Rule 17Ad–22(e)(4)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain the financial resources required under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable, in combined or separately maintained clearing or guaranty funds.

Proposed Rule 17Ad–22(e)(4)(vi) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to test the sufficiency of its total financial resources available to meet the minimum financial resource requirements under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable, by conducting a stress test of its total financial resources at least once each day using standard predetermined parameters and assumptions. Proposed Rule 17Ad–22(e)(4)(vi) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to conduct a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and consider modifications to ensure they are appropriate for determining the covered clearing agency's required level of default protection in light of current market conditions. When the products cleared or markets served by a covered clearing agency display high volatility or become less liquid, and when the size or concentration of positions held by the entity's participants increases significantly, the proposed rule would require a covered clearing agency to have policies and procedures for conducting comprehensive analyses of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly. Proposed Rule 17Ad–22(e)(4)(vi) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for the reporting of the results of this analysis to the appropriate decision makers at the covered clearing agency, including its risk management committee or board of directors, and to require the use of the results to evaluate the adequacy of and to adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management policies and procedures, in supporting compliance with the minimum financial resources requirements in proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable.[771]

Finally, proposed Rule 17Ad–22(e)(4)(vii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require a conforming model validation for its credit risk models to be performed not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management policies and procedures. The Commission also proposed to define ''conforming model validation'' to mean an evaluation of the performance of each material risk management model used by a covered clearing agency, including initial margin models, liquidity risk models, and models used to generate guaranty fund requirements, along with the related parameters and assumptions associated with such models. The proposed definition would further require that the model validation be performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models or policies being validated so that risk models can be candidly assessed.[772]

The Commission is adopting Rule 17Ad–22(e)(4) with modifications, as previously discussed in Part II.C.4.c. The Commission is adopting two modifications to Rule 17Ad–22(e)(4)(vii). First, because the Commission is modifying the definition of ''conforming model validation'' by striking ''conforming,'' as previously discussed in Part II.C.4.c, the Commission is modifying Rule 17Ad–22(e)(4)(vii) to conform to the revised

[770] *See supra* Part II.C.3.

[771] *See id.* at 29526–27.

[772] *See supra* Part II.C.4.

definition. Second, to be consistent with the corresponding requirement for model validation of liquidity risk models in Rule 17Ad–22(e)(7)(vii), the Commission is modifying Rule 17Ad–22(e)(4)(vii) by striking ''to be performed.'' [773]

The Commission is also adopting four other modifications to Rule 17Ad–22(e)(4), as previously discussed in Part II.C.4.c. First, the Commission is modifying Rule 17Ad–22(e)(4)(v) so that it references only paragraphs (e)(4)(ii) and (iii) (and not paragraph (e)(4)(i)), consistent with the Commission's discussion of the proposed rule in the CCA Standards proposing release. Second, to make clear that prefunded financial resources should be exclusive of assessments for additional guaranty fund contributions or other resources that are not prefunded, the Commission is modifying Rule 17Ad–22(e)(4)(iv) to state ''exclusive of'' assessments rather than ''excluding'' assessments. Third, the Commission is modifying Rule 17Ad–22(e)(4)(vi)(A) to refer to ''stress testing'' rather than ''a stress test'' to improve consistency with the definition of ''stress testing'' in Rule 17Ad–22(a)(17). Fourth, the Commission is revising Rule 17Ad–22(e)(4)(vi)(C) to replace ''and'' with ''or'' so that the criteria for conducting analysis more frequently than monthly are disjunctive rather than conjunctive, since the criteria described may not be correlated to each other. Fifth, the Commission is correcting a technical error in Rule 17Ad–22(e)(4)(vi)(D): references to paragraphs (e)(4)(iv)(B) and (C) will be changed to paragraphs (e)(4)(vi)(B) and (C) respectively. Sixth, the Commission is moving requirements proposed in Rule 17Ad–22(e)(13) to Rule 17Ad–22(e)(4) so that all requirements pertinent to a covered clearing agency's management of credit risk are contained in one rule. This modification is discussed below in Part IV.A.13.[774]

The purpose of this information collection is to identify and limit credit exposures to participants and to satisfy all of its settlement obligations in the event of a participant default, to address the allocation of credit losses if collateral and other resources are insufficient to fully cover its credit exposures following a participant default, and to describe the covered clearing agency's process to replenish financial resources following such a default.

5. Rule 17Ad–22(e)(5)

As proposed, Rule 17Ad–22(e)(5) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and also require policies that set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its own or its participants' credit exposures. In addition, Rule 17Ad–22(e)(5) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to include a not-less-than-annual review of the sufficiency of a covered clearing agency's collateral haircuts and concentration limits. The Commission is adopting Rule 17Ad–22(e)(5) as proposed.[775]

The purpose of the information collection is to enable a covered clearing agency to be able to maintain sufficient collateral by using appropriately conservative haircuts and concentration limits.

6. Rule 17Ad–22(e)(6)

As proposed, Rule 17Ad–22(e)(6) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management on an ongoing basis and regularly reviewed, tested, and verified. Proposed Rule 17Ad–22(e)(6)(i) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in a margin system that, at a minimum, considers and produces margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market. Proposed Rule 17Ad–22(e)(6)(ii) would require a covered clearing agency that provides CCP services to establish implement, maintain and enforce written policies and procedures reasonably designed to ensure that the margin system would mark participant positions to market and collect margin, including variation margin or equivalent charges if relevant, at least daily, and include the authority and operational capacity to make intraday margin calls in defined circumstances. Proposed Rule 17Ad–22(e)(6)(iii) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to calculate margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. Proposed Rule 17Ad–22(e)(6)(iv) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it uses reliable sources of timely price data and procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. Proposed Rule 17Ad–22(e)(6)(v) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the use of an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.

Proposed Rule 17Ad–22(e)(6)(vi) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish a risk-based margin system that is monitored by management on an ongoing basis. Proposed Rule 17Ad–22(e)(6)(vi) would also require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review, test, and verify its risk-based margin system by conducting backtests of its margin resources at least once each day using standard predetermined parameters and assumptions. Proposed Rule 17Ad–22(e)(6)(vi) would require a covered clearing agency that provides CCP services to 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 conforming sensitivity analysis of its margin resources and its parameters and assumptions for backtesting on at least a monthly basis, and considering modifications to ensure the backtesting practices are appropriate for determining the adequacy of the covered clearing agency's margin resources. Proposed Rule 17Ad–22(e)(6)(vi) would require a covered clearing agency that provides CCP

[773] *See supra* Part II.C.4.c.

[774] *See also supra* Part II.C.13.c.

[775] *See supra* Part II.C.5.

services to 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 conforming sensitivity analysis of its margin resources and its parameters and assumptions for backtesting more frequently than monthly during periods of time when the products cleared or markets served display high volatility or become less liquid, and when the size or concentration of positions held by the covered clearing agency's participants increases or decreases significantly. Proposed Rule 17Ad–22(e)(6)(vi) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review, test, and verify its risk-based margin system by reporting the results of its analyses above to appropriate decision makers at the covered clearing agency, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management framework.[776]

Finally, proposed Rule 17Ad–22(e)(6)(vii) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to require not less than annually a conforming model validation of the covered clearing agency's margin system and related models.[777]

The Commission is adopting Rule 17Ad–22(e)(6) with modifications, as previously discussed in Part II.C.6.c. First, the Commission is modifying Rule 17Ad–22(e)(6) to remove references to ''conforming'' consistent with the modification to the definitions of ''sensitivity ''analysis'' discussed in Part II.C.6.c and of ''model validation'' discussed in Part II.C.4.c. Second, to improve clarity, the Commission is modifying Rule 17Ad–22(e)(6)(v) to require policies and procedures that use reliable sources of timely price data and that ''use'' procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. Third, because backtests are conducted with respect to the margin model and not margin resources, the Commission is modifying Rule 17Ad–22(e)(6)(vi)(A) to replace the phrase ''margin resources'' with ''margin model.'' Fourth, to avoid conflating sensitivity analysis with backtesting, the Commission is modifying Rules 17Ad–22(e)(6)(vi)(B) and (C) to clarify that a sensitivity analysis should be conducted of the margin model and not of margin resources. Fifth, the Commission is modifying Rule 17Ad–22(e)(6)(vi)(C) to replace ''and'' with ''or'' so that the criteria for conducting analysis more frequently than monthly are disjunctive rather than conjunctive, since the criteria described may not be correlated to each other.

The purpose of the information collection is to enable a covered clearing agency to be able to collect sufficient margin subject to regular sensitivity analysis, monthly backtesting, and an annual model validation.

7. Rule 17Ad–22(e)(7)

As proposed, Rule 17Ad–22(e)(7) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by it, by meeting, at a minimum, the ten requirements specified in the rule.

Proposed Rule 17Ad–22(e)(7)(i) would require that a covered clearing agency's policies and procedures be reasonably designed to ensure that it maintains sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that includes the default of the participant family that would generate the largest aggregate payment obligation for it in extreme but plausible market conditions.

Proposed Rule 17Ad–22(e)(7)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it holds qualifying liquid resources sufficient to meet the minimum liquidity resource requirement in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members.

Proposed Rule 17Ad–22(e)(7)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it uses accounts and services at a Federal Reserve Bank, pursuant to Section 806(a) of the Clearing Supervision Act, or other relevant central bank, when available and where determined to be practical by the board of directors of the covered clearing agency, to enhance its management of liquidity risk.

Proposed Rule 17Ad–22(e)(7)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it undertakes due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has sufficient information to understand and manage the liquidity provider's liquidity risks, and the capacity to perform as required under its commitments to provide liquidity.

Proposed Rule 17Ad–22(e)(7)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that the covered clearing agency maintains and, on at least an annual basis, tests with each liquidity provider, to the extent practicable, its procedures and operational capacity for accessing each type of relevant liquidity resource.

Proposed Rule 17Ad–22(e)(7)(vi)(A) through (C) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement of proposed Rule 17Ad–22(e)(7)(i) by (A) conducting a stress test of its liquidity resources at least once each day using standard and predetermined parameters and assumptions; (B) conducting a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate for determining the covered clearing agency's identified liquidity needs and resources in light of current and evolving market conditions at least once each month; and (C) conducting a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources more frequently when products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by participants increases significantly, or in other circumstances described in the covered clearing agency's policies and procedures. Proposed Rule 17Ad–22(e)(7)(vi)(D) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures

[776] *See id.* at 29530.

[777] *See supra* Part II.C.6.

reasonably designed to result in reporting the results of the analyses performed under proposed Rule 17Ad–22(e)(7)(vi)(B) and (C) to appropriate decision makers, including the risk management committee or board of directors, at the covered clearing agency for use in evaluating the adequacy of and adjusting its liquidity risk management framework.

Proposed Rule 17Ad–22(e)(7)(vii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in performing an annual or more frequent conforming model validation of its liquidity risk models.[778]

Proposed Rule 17Ad–22(e)(7)(viii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to address foreseeable liquidity shortfalls that would not be covered by its liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.

Proposed Rule 17Ad–22(e)(7)(ix) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to describe its process for replenishing any liquid resources that it may employ during a stress event.

Finally, proposed Rule 17Ad–22(e)(7)(x) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it, at least once a year, evaluates the feasibility of maintaining sufficient liquid resources at a minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions if the covered clearing agency provides CCP services and is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile.[779]

The Commission is adopting Rule 17Ad–22(e)(7) with modifications, as previously discussed in Part II.C.7.c. First, the Commission is modifying Rule 17Ad–22(e)(7)(vi)(A) to refer to ''stress testing'' rather than ''a stress test'' to improve consistency with the definition of ''stress testing'' in Rule 17Ad–22(a)(17). Second, the Commission is modifying Rule 17Ad–22(e)(7)(vi)(C) in two ways. To improve consistency with Rule 17Ad–22(e)(4)(vi)(C), the Commission is adding ''or'' to link ''display high volatility'' with ''become less liquid'' because these concepts are intended to describe events related to the products cleared or markets served. The Commission is also replacing ''and'' with ''or'' in Rule 17Ad–22(e)(7)(vi)(C) so that the criteria for conducting analysis more frequently than monthly are disjunctive rather than conjunctive, since the list of criteria is open to other appropriate circumstances described in a covered clearing agency's policies and procedures and may not be correlated. Third, the Commission is making two modifications in adopting Rule 17Ad–22(e)(7)(vi)(D) to correct technical errors in the proposed rule text: (i) References to paragraphs (e)(6)(vii)(B) and (C) will be changed to paragraphs (e)(7)(vi)(B) and (C) respectively; and (ii) the rule will refer to the covered clearing agency's ''liquidity'' risk management framework, rather than its ''credit'' risk management framework. Fourth, the Commission is striking ''conforming'' from Rule 17Ad–22(e)(7)(vii) to be consistent with the modifications to the definition of ''model validation'' discussed in Part II.C.4.c.

The purpose of this information collection is to identify and limit liquidity risk so that a covered clearing agency can satisfy its settlement obligations on an ongoing and timely basis by holding a sufficient amount of qualifying liquid resources and performing regular stress testing of its liquid resources. The purpose of this information collection is also to help ensure that a covered clearing agency addresses foreseeable liquidity shortfalls and can replenish any liquid resources that it may employ in a stress event. The purpose of this information collection is also to help ensure that a covered clearing agency manages the risks posed by its liquidity providers.

8. Rule 17Ad–22(e)(8)

As proposed, Rule 17Ad–22(e)(8) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.[780]

The Commission is adopting Rule 17Ad–22(e)(8) with one modification, as previously discussed in Part II.C.8.c. To remove potential ambiguity as to the timing of settlement finality under the rule, the Commission is modifying Rule 17Ad–22(e)(8) to state that the point at which settlement is final is ''to be'' no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.

The purpose of this information collection is to promote consistent standards of timing and reliability in the settlement process.

9. Rule 17Ad–22(e)(9)

As proposed, Rule 17Ad–22(e)(9) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to conduct its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency, and minimizes and manages credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency. The Commission is adopting Rule 17Ad–22(e)(9) as proposed.[781]

The purpose of this information collection is to promote reliability in a covered clearing agency's settlement operations.

10. Rule 17Ad–22(e)(10)

As proposed, Rule 17Ad–22(e)(10) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments and operational practices that identify, monitor, and manage the risk associated with such physical deliveries. The Commission is adopting Rule 17Ad–22(e)(10) as proposed.[782]

The purpose of this information collection is to provide a covered clearing agency's participants with the information necessary to evaluate the risks and costs associated with participation in the covered clearing agency.

11. Rule 17Ad–22(e)(11)

As proposed, Rule 17Ad–22(e)(11)(i) would require a covered clearing agency

[778] *See id.; see also supra* notes 275–305 and accompanying text (discussing generally the requirements accompanying the definition of ''model validation'').

[779] *See supra* Part II.C.7.

[780] *See supra* Part II.C.8.

[781] *See supra* Part II.C.9.

[782] *See supra* Part II.C.10.

that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain securities in an immobilized or dematerialized form for their transfer by book entry, ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities. Proposed Rule 17Ad–22(e)(11)(ii) would require a covered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to implement internal auditing and other controls to safeguard the rights of securities issuers and holders and prevent the unauthorized creation or deletion of securities, and conduct periodic and at least daily reconciliation of securities issues it maintains. Proposed Rule 17Ad–22(e)(11)(iii) would require a covered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to protect assets against custody risk through appropriate rules and procedures consistent with relevant laws, rules, and regulations in jurisdictions where it operates. The Commission is adopting Rule 17Ad–22(e)(11) as proposed.[783]

The purpose of this information collection is to reduce securities transfer processing costs and the risks associated with securities settlement and custody, as well as increase the speed and efficiency of the settlement process.

12. Rule 17Ad–22(e)(12)

As proposed, Rule 17Ad–22(e)(12) would require a covered clearing agency, for transactions that involve the settlement of two linked obligations, to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other, regardless of whether the covered clearing agency settles on a gross or net basis and when finality occurs. The Commission is adopting Rule 17Ad–22(e)(12) as proposed.[784]

The purpose of this information collection is to promote the elimination of principal risk in transactions with linked obligations.

13. Rule 17Ad–22(e)(13)

As proposed, Rule 17Ad–22(e)(13) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in the event of a participant default. Proposed rule 17Ad–22(e)(13)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to address the allocation of credit losses it may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the covered clearing agency may borrow from liquidity providers. Proposed Rule 17Ad–22(e)(13)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to describe its process to replenish any financial resources it may use following a member default or other event in which use of such resources is contemplated. Finally, proposed Rule 17Ad–22(e)(13)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.[785]

The Commission is adopting Rule 17Ad–22(e)(13) with modifications, as previously discussed in Part II.C.13.c and noted in Part IV.A.4. The Commission is moving the requirements in proposed Rules 17Ad–22(e)(13)(i) and (ii) to Rules 17Ad–22(e)(4)(viii) and (ix), respectively, to consolidate requirements for management of a covered clearing agency's default waterfall within a single rule. The Commission believes this modification improves consistency between Rules 17Ad–22(e)(4) and (7). Specifically, Rule 17Ad–22(e)(4) includes requirements intended to facilitate the management of credit risk, and proposed Rules 17Ad–22(e)(13)(i) and (ii) include requirements to address the allocation of credit losses and the replenishment of funds. Similarly, Rule 17Ad–22(e)(7) includes requirements intended to facilitate the management of liquidity risk, and Rules 17Ad–22(e)(7)(viii) and (ix) include requirements to address liquidity shortfalls and replenish liquid resources. In contrast, Rule 17Ad–22(e)(13) is intended to ensure that a covered clearing agency has policies and procedures addressing its authority and operational capacity to take timely action to contain losses and liquidity demands, and proposed Rule 17Ad–22(e)(13)(iii) includes requirements related to the testing of default procedures.

The purpose of this information collection is to facilitate the functioning of a covered clearing agency in the event that a participant fails to meet its obligations, as well as limit the extent to which a participant's failure can spread to other participants or the covered clearing agency itself.

14. Rule 17Ad–22(e)(14)

As proposed, Rule 17Ad–22(e)(14) would require a covered clearing agency that is a security-based swap clearing agency or a complex risk profile clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a member's customers and the collateral provided to the covered clearing agency with respect to those positions, and effectively protect such positions and related collateral from the default or insolvency of that member. The Commission is adopting Rule 17Ad–22(e)(14) as proposed.[786]

The purpose of this information collection is to facilitate the safe and effective holding and transfer of customers' positions and collateral in the event of a participant's default or insolvency.

15. Rule 17Ad–22(e)(15)

As proposed, Rule 17Ad–22(e)(15) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize. Proposed Rule 17Ad–22(e)(15)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as

[783] *See supra* Part II.C.11.

[784] *See supra* Part II.C.12.

[785] *See supra* Part II.C.13.

[786] *See supra* Part II.C.14.

appropriate, of its critical operations and services if such action is taken. Proposed Rule 17Ad–22(e)(15)(ii) would require a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for holding liquid net assets funded by equity equal to the greater of either six months of its current operating expenses or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under Rule 17Ad–22(e)(3)(ii). Additionally, proposed Rule 17Ad–22(e)(15)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for monitoring its business operations and reducing the likelihood of losses. Proposed Rule 17Ad–22(e)(15)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for maintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required by the rule, as discussed above. The Commission is adopting Rule 17Ad–22(e)(15) as proposed.[787]

The purpose of this information collection is to mitigate the potential impairment of a covered clearing agency as a result of a decline in revenues or increase in expenses.

16. Rule 17Ad–22(e)(16)

As proposed, Rule 17Ad–22(e)(16) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to safeguard its own and its participants' assets and minimize the risk of loss and delay in access to these assets. Proposed Rule 17Ad–22(e)(16) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to invest such assets in instruments with minimal credit, market, and liquidity risks. The Commission is adopting Rule 17Ad–22(e)(16) as proposed.[788]

The purpose of this information collection is to improve the ability of a covered clearing agency to meet its settlement obligations.

17. Rule 17Ad–22(e)(17)

As proposed, Rule 17Ad–22(e)(17) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risk. Proposed Rule 17Ad–22(e)(17)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. Proposed Rule 17Ad–22(e)(17)(ii) would require a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. Finally, proposed Rule 17Ad–22(e)(17)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a business continuity plan that addresses events posing a significant risk of disrupting operations.

The Commission is adopting Rule 17Ad–22(e)(17) with one modification: Because the text in Rule 17Ad–22(e)(17)(ii) for ''establishing and maintaining policies and procedures reasonably designed'' is duplicative of the requirement under Rule 17Ad–22(e) to have policies and procedures reasonably designed to establish, maintain, implement, and enforce the requirements thereunder, the Commission is removing the duplicative text.[789]

The purpose of this information collection is to limit operational disruptions that may impede the proper functioning of a covered clearing agency.

18. Rule 17Ad–22(e)(18)

As proposed, Rule 17Ad–22(e)(18) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other FMUs. Proposed Rule 17Ad–22(e)(18) would also require that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency and to monitor compliance with participation requirements on an ongoing basis. The Commission is adopting Rule 17Ad–22(e)(18) as proposed.[790]

The purpose of this information collection is to enable a covered clearing agency to ensure that only entities with sufficient financial and operational capacity are direct participants in the covered clearing agency, while still ensuring that all qualified persons can access a covered clearing agency's services. The purpose of this information collection is also to enable a covered clearing agency to monitor that participation requirements are met on an ongoing basis and to identify a participant experiencing financial difficulties before the participant fails to meet its settlement obligations.

19. Rule 17Ad–22(e)(19)

As proposed, Rule 17Ad–22(e)(19) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants in the covered clearing agency to access the covered clearing agency's payment, clearing, or settlement facilities (hereinafter ''tiered participation arrangements''). In addition, proposed Rule 17Ad–22(e)(19) would also require that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review the material risks to the covered clearing agency arising from such tiered participation arrangements. The Commission is adopting Rule 17Ad–22(e)(19) as proposed.[791]

The purpose of this information collection is to enable a covered clearing agency to identify and manage risks posed by non-member entities, such as the customers of clearing members.

20. Rule 17Ad–22(e)(20)

As proposed, Rule 17Ad–22(e)(20) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures

[787] *See supra* Part II.C.15.

[788] *See supra* Part II.C.16.

[789] *See supra* Part II.C.17.

[790] *See supra* Part II.C.18.

[791] *See supra* Part II.C.19.

reasonably designed to identify, monitor, and manage risks related to any link with one or more other clearing agencies, FMUs, or trading markets.[792] The Commission is adopting Rule 17Ad–22(e)(20) as proposed.

The purpose of this information collection is to enable a covered clearing agency to identify and manage risks posed by linkages to other entities, such as other clearing agencies, FMUs, or trading markets.

21. Rule 17Ad–22(e)(21)

As proposed, Rule 17Ad–22(e)(21) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it is efficient and effective in meeting the requirements of its participants and the markets it serves. Proposed Rule 17Ad–22(e)(21) would also require a covered clearing agency's management to regularly review the efficiency and effectiveness of its (i) clearing and settlement arrangements; (ii) operating structure, including risk management policies, procedures, and systems; (iii) scope of products cleared, settled, or recorded; and (iv) use of technology and communication procedures.

The Commission is adopting Rule 17Ad–22(e)(21) with one modification: the Commission is removing reference to ''recorded'' products under Rule 17Ad–22(e)(21)(iii) because recording products is not a function of covered clearing agencies.[793]

The purpose of this information collection is to ensure that the services provided by a covered clearing agency do not become inefficient and to promote the sound operation of a covered clearing agency.

22. Rule 17Ad–22(e)(22)

As proposed, Rule 17Ad–22(e)(22) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it uses, or at a minimum accommodates, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement. The Commission is adopting Rule 17Ad–22(e)(22) as proposed.[794]

The purpose of this information collection is to ensure the prompt and accurate clearance and settlement of securities transactions by enabling participants to communicate with a clearing agency in a timely, reliable, and accurate manner.

23. Rule 17Ad–22(e)(23)

As proposed, Rule 17Ad–22(e)(23) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain clear and comprehensive rules and procedures that provide for the specific disclosures enumerated in the rule, as discussed below. Proposed Rule 17Ad–22(e)(23) would require such policies and procedures to specifically require a covered clearing agency to (i) publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures; (ii) provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency; and (iii) publicly disclose relevant basic data on transaction volume and values.

Rule 17Ad–22(e)(23)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain clear and comprehensive rules and procedures that provide for a comprehensive public disclosure of its material rules, policies, and procedures regarding governance arrangements and legal, financial, and operational risk management, accurate in all material respects at the time of publication, including (i) a general background of the covered clearing agency, including its function and the market it serves, basic data and performance statistics on its services and operations, such as basic volume and value statistics by product type, average aggregate intraday exposures to its participants, and statistics on the covered clearing agency's operational reliability, and a description of its general organization, legal and regulatory framework, and system design and operations; (ii) a standard-by-standard summary narrative for each applicable standard set forth in proposed Rules 17Ad–22(e)(1) through (22) with sufficient detail and context to enable the reader to understand its approach to controlling the risks and addressing the requirements in each standard; (iii) a summary of material changes since the last update of the disclosure; and (iv) an executive summary of the key points regarding each. Rule 17Ad–22(e)(23)(v) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the comprehensive public disclosure required under proposed Rule 17Ad–22(e)(23)(iv) is updated not less than every two years, or more frequently following changes to its system or the environment in which it operates to the extent necessary, to ensure statements previously provided remain accurate in all material respects.[795]

The Commission is adopting Rule 17Ad–22(e)(23) with three modifications, as previously discussed in Part II.C.23.c. First, the Commission is striking the language ''maintain clear and comprehensive rules and procedures'' under Rule 17Ad–22(e)(23) because Rule 17Ad–22(e) already requires that a covered clearing agency have written policies and procedures reasonably designed to establish, implement, maintain and enforce the requirements thereunder. Consistent with this change, the Commission is also striking ''providing'' from Rule 17Ad–22(e)(23)(iv). Second, the Commission is modifying Rule 17Ad–22(e)(23)(iv) so that the language more closely tracks the categories of requirements in Rule 17Ad–22(e). The purpose of this modification is to make clear that the comprehensive public disclosure is intended to describe the material rules, policies and procedures of the covered clearing agency related to compliance with Rule 17Ad–22(e), rather than require a complete disclosure of all rules, policies, and procedures. As adopted, Rule 17Ad–22(e)(23)(iv) will require policies and procedures providing for a comprehensive public disclosure that describes the covered clearing agency's material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework, accurate in all material respects at the time of publication. Third, the Commission is also modifying paragraph (iv)(D) to correct technical errors in the proposed rule text so that it refers to the standards set forth in paragraphs (e)(1) through (23) (rather than (e)(1) through (22)). The Commission believes that providing a summary narrative for Rule 17Ad–22(e)(23) is appropriate because Rule 17Ad–22(e)(23) requires policies and procedures to (i) publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures; (ii) provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency; and (iii) publicly disclose relevant basic data on transaction

[792] *See supra* Part II.C.20.

[793] *See supra* Part II.C.21.

[794] *See supra* Part II.C.22.

[795] *See supra* Part II.C.23.

volume and values, in addition to requiring the standard-by-standard summary narrative required by Rule 17Ad–22(e)(23)(iv)(D).

The purpose of this information collection is to ensure that participants and prospective participants in a covered clearing agency are provided with a complete picture of the covered clearing agency's operations and risk management so that they can understand the risks and responsibilities of participation in the covered clearing agency.

24. Rule 17Ab2–2

Proposed Rule 17Ab2–2 would establish procedures for the Commission to make determinations affecting covered clearing agencies in three cases:

- Pursuant to proposed Rule 17Ab2–2(a), the Commission may, if it deems appropriate, upon application by any registered clearing agency or member thereof or on its own initiative, determine whether a registered clearing agency should be considered a covered clearing agency.
- Pursuant to proposed Rule 17Ab2–2(b), the Commission may, if it deems appropriate, upon application by any clearing agency or member thereof, or on its own initiative, determine whether a covered clearing agency meets the definition of ''systemically important in multiple jurisdictions.''
- Pursuant to proposed Rule 17Ab2–2(c), the Commission may, if it deems appropriate, determine whether any of the activities of a clearing agency providing central counterparty services, in addition to clearing agencies registered with the Commission for the purpose of clearing security-based swaps, have a more complex risk profile.

Under proposed Rule 17Ab2–2(e), in each of the above cases, the Commission would publish notice of its intention to consider such determinations, together with a brief statement of the grounds under consideration, and provide at least a 30-day public comment period prior to any determination. The Commission may also provide the clearing agency subject to the proposed determination opportunity for hearing regarding the proposed determination. Under proposed Rule 17Ab2–2(f), in each of the above cases, notice of determinations would be given by prompt publication thereof, together with a statement of written reasons supporting the determination.[796]

The Commission is adopting Rule 17Ab2–2 with modifications. First the Commission has determined not to adopt proposed Rule 17Ab2–2(a). Second, with respect to proposed Rules 17Ab2–2(b) and (c),[797] the Commission is removing the factors that reference such other characteristics or factors that the Commission deems appropriate in the circumstances. Third, the Commission is adopting a new paragraph to provide for a process to rescind any determination made pursuant to Rule 17Ab2–2. This new rule includes the same procedural elements as for determinations for application of covered clearing agency status, including publication with a 30-day comment period. Because the Commission is not adopting Rule 17Ab2–2(a), the Commission is also renumbering the remaining paragraphs accordingly.

The purpose of this information collection is to enable determinations by the Commission regarding the status of a registered clearing agency or a covered clearing agency, as applicable and as described above.

25. Rule 17Ad–22(c)(1)

Rule 17Ad–22(c)(1) requires that, each fiscal quarter (based on calculations made as of the last business day of the clearing agency's fiscal quarter), or at any time upon Commission request, a registered clearing agency that performs CCP services shall calculate and maintain a record, in accordance with Rule 17a–1 under the Exchange Act,[798] of the financial resources necessary to meet the requirements of paragraph (b)(3) of Rule 17Ad–22, and sufficient documentation to explain the methodology it uses to compute such financial resource requirement.

In response to the comments received,[799] the Commission is modifying Rule 17Ad–22(c)(1) to require a registered clearing agency that performs CCP services to calculate and maintain a record of financial and qualifying liquid resources necessary to also meet paragraphs (e)(4) and (e)(7), as applicable, in addition to paragraph (b)(3). Because calculations under Rule 17Ad–22(b)(3) and (e)(4) would refer to the same financial resources at a covered clearing agency, the Commission anticipates that the calculations for each would be the same and would involve adjustments needed to synthesize and format existing information in a manner sufficient to explain the methodology the clearing agency uses to meet the requirements of the rule.

The purpose of this information collection is to require a CCP to calculate and document its financial and qualifying liquid resources necessary under Rules 17Ad–22.

B. Respondents

In the CCA Standards proposing release, the Commission estimated that the majority of the requirements in Rule 17Ad–22(e) would have then applied to five registered clearing agencies, each of which met the definition of ''covered clearing agency.'' [800] The Commission estimated that two additional entities might seek to register with the Commission and that, of those, one might be a security-based swap clearing agency. The Commission also noted that the number of covered clearing agencies subject to Rule 17Ad–22(e) could increase further if either (i) the FSOC were to designate additional clearing agencies as systemically important or (ii) Commission determinations under Rule 17Ab2–2 found additional clearing agencies to be covered clearing agencies. The Commission noted, however, that it could not predict whether the FSOC might exercise such authority or whether such determinations under Rule 17Ab2–2 would be appropriate, and therefore estimated, for PRA purposes, that a 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 then further clarified that Rule 17Ad–22(e)(6) would only have six respondents because it only applies to CCPs, Rule 17Ad–22(e)(11) would only have one respondent because it only applies to CSDs, and Rule 17Ad–22(e)(14) would only have two respondents because it only applies to security-based swap clearing agencies.

With regard to Rule 17Ab2–2, the Commission estimated, for PRA purposes, that two registered clearing agencies or their members on their behalf might apply for a Commission determination or be subject to a Commission-initiated determination

[796] *See supra* Part II.D.

[797] Because the Commission has determined not to adopt proposed Rule 17Ab2–2(a), the Commission is renumbering Rule 17Ab2–2 accordingly, and proposed Rules 17Ab2–2(b) and (c) will therefore appear in Rules 17Ab2–2(a) and (b) respectively. *See infra* Part VI.

[798] *See* 17 CFR 240.17a–1.

[799] *See supra* Part I.C.3.

[800] *See* CCA Standards, *supra* note 5, at 29566. Specifically, under the definition, four registered clearing agencies would have been designated clearing agencies for which the Commission is the supervisory agency, and one registered clearing agency would have been a security-based swap clearing agency. Because of modifications to Rule 17Ad–22(a), the definition of ''covered clearing agency'' is being moved to Rule 17Ad–22(a)(5). *See infra* Part VI.

regarding whether the registered clearing agency is a covered clearing agency, whether the registered clearing agency is involved in activities with a more complex risk profile, or whether the registered clearing agency, as a covered clearing agency, is systemically important in multiple jurisdictions.[801]

With respect to Rule 17Ad–22(c)(1), which the Commission is modifying in response to comments received,[802] the affected respondents would only be covered clearing agencies because the modifications to Rule 17Ad–22(c)(1) refer to requirements that only apply to covered clearing agencies subject to Rule 17Ad–22(e). Accordingly, the affected respondents are the same as under Rule 17Ad–22(e).

The Commission received no comment regarding the estimates for Rules 17Ad–22(e) and 17Ab2–2 and continues to believe that the above estimates are appropriate for the below discussion of total annual reporting and recordkeeping burdens.

C. Total Annual Reporting and Recordkeeping Burdens

As described in the CCA Standards proposing release, the Commission believes the information collected pursuant to Rule 17Ad–22(e) reflects, to a degree, existing policies and procedures at covered clearing agencies, but in some instances a covered clearing agency will be required to develop new policies and procedures. Thus, when a covered clearing agency reviews and updates its policies and procedures pursuant to Rule 17Ad–22(e), the Commission believes that the PRA burden may vary across the requirements under Rule 17Ad–22(e), depending on the complexity of the requirement in question and the extent to which a covered clearing agency already has policies and procedures consistent with the requirement. As a general matter, the portions of Rule 17Ad–22(e) for which the Commission expects a higher PRA burden are those provisions including requirements not comparable to any existing requirements under Rule 17Ad–22(d). Where the requirements do not reflect existing practices or the normal course of a covered clearing agency's activity, the PRA burden may entail, in addition to ongoing burdens, initial one-time burdens to develop new policies and procedures. The Commission received no comments regarding the accuracy of the estimated annual reporting and recordkeeping burdens for Rules 17Ad–22(e) or 17Ab2–2.

As described in the CCA Standards proposing release,[803] the Commission continues to believe that Rules 17Ad–22(e)(1), (8) through (10), (12), (14), (16), and (22) contain requirements either substantially similar to those in Rule 17Ad–22(d) or reflect current practices at covered clearing agencies. The Commission believes that a covered clearing agency may need to make only limited changes to its policies and procedures pursuant to the requirements in these rules. For example, a covered clearing agency may need to conduct a comparison of its existing policies and procedures against each rule to confirm that its policies and procedures are consistent with the requirements therein.

The Commission also continues to believe that Rules 17Ad–22(e)(2), (3), (5), (11), (13), (17), (18), (20), and (21) contain provisions that are similar to those in Rule 17Ad–22(d) but would also impose additional requirements not found in Rule 17Ad–22(d). The Commission believes that a covered clearing agency may need to make changes to update its policies and procedures pursuant to the requirements in these rules. For example, a covered clearing agency may need to review and amend its existing rules, policies, and procedures but may not need to develop, design, or implement new operations or practices pursuant to these rules.

For Rules 17Ad–22(e)(4), (6), (7), (15), (19), and (23), for which no comparable pre-existing requirements under Rule 17Ad–22 have been identified, the Commission continues to believe that a covered clearing agency may need to make more extensive changes to its policies and procedures, may need to implement new policies and procedures, and may need to take other steps pursuant to the requirements in these rules. For example, a covered clearing agency may need to develop, design, and implement new operations and practices. In these cases, the PRA burden is greater since these requirements may not reflect established practices or the normal course of a covered clearing agency's activities. Further, the PRA burden for these rules may entail both initial one-time burdens, such as create new policies and procedures, as well as ongoing burdens, such as requirements to make certain disclosures or perform certain types of review, on a periodic basis.

1. Rule 17Ad–22(e)(1)

As described in Part IV.A.1, the Commission is adopting Rule 17Ad–22(e)(1) as proposed. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[804]

Rule 17Ad–22(e)(1) contains substantially similar provisions to Rule 17Ad–22(d)(1).[805] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(1),[806] the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of approximately 56 hours to review and revise existing policies and procedures.[807]

Rule 17Ad–22(e)(1) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[808] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(1) impose an aggregate annual burden on respondent clearing agencies of 21 hours.[809]

2. Rule 17Ad–22(e)(2)

As described in Part IV.A.2, the Commission is adopting Rule 17Ad–22(e)(2) with modifications. In consideration of these modifications, the burden estimates for the rule have been modified from the preliminary estimates in the CCA Standards proposing release, as described below.

Rule 17Ad–22(e)(2) contains similar provisions to Rule 17Ad–22(d)(8) but also adds additional requirements that

[801] *See id.* at 29567.

[802] *See supra* Part I.C.3.

[803] *See* CCA Standards proposing release, *supra* note 5, at 29567 & nn.440–443.

[804] *See* CCA Standards proposing release, *supra* note 5, at 29567–68.

[805] *See* 17 CFR 240.17Ad–22(d)(1); *see also supra* Part II.C.1.

[806] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260.

[807] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours)) = 8 hours x 7 respondent clearing agencies = 56 hours.

[808] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[809] This figure was calculated as follows: (Compliance Attorney for 3 hours) × 7 respondent clearing agencies = 21 hours.

do not appear in Rule 17Ad–22(d).[810] The Commission therefore expects that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(8),[811] the Commission preliminarily estimated that respondent clearing agencies would incur an aggregate one-time burden of approximately 154 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[812] Because the modifications to Rule 17Ad–22(e)(2) noted above will require updating current policies and procedures or establishing new policies and procedures to ensure compliance, the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of approximately 175 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[813]

Rule 17Ad–22(e)(2) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[814] the Commission preliminarily estimated that the ongoing activities required by Rule 17Ad–22(e)(2) would impose an aggregate annual burden on respondent clearing agencies of 28 hours.[815] Because the modifications to Rule 17Ad–22(e)(2) noted above will require updating current policies and procedures or establishing new policies and procedures to ensure compliance, the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(2) will impose an aggregate annual burden on respondent clearing agencies of 35 hours.[816]

3. Rule 17Ad–22(e)(3)

As described in Part IV.A.3, the Commission is adopting Rule 17Ad–22(e)(3) with one modification. Because this modification is only technical or clarifying in nature, the Commission does not believe they will alter the PRA burdens described in the CCA Standards proposing release. The burden estimates below are unchanged from the CCA Standards proposing release.[817]

While Rule 17Ad–22(d) requires registered clearing agencies to have policies and procedures to manage certain risks,[818] Rule 17Ad–22(e)(3) requires a comprehensive framework for risk management, under which policies and procedures for risk management are designed holistically, are consistent with each other, and work effectively together. Accordingly, the PRA burden requires a respondent clearing agency to revise its written rules, policies, and procedures to include, among other things, periodic review and plans for the recovery and orderly wind-down of the covered clearing agency. As a result, the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of 399 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[819]

Rule 17Ad–22(e)(3) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures created in response to the rule and activities related to facilitating a periodic review of the risk management framework. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[820] the Commission estimates that the ongoing activities required by Rule 17Ad(22)(e)(3) impose an aggregate annual burden on respondent clearing agencies of 343 hours.[821] Additionally, the Commission notes that the estimated ongoing burden for Rule 17Ad–22(e)(3) is similar to the initial one-time burden because the rule requires policies and procedures for review on a specified periodic basis and approval by the board of directors annually.

4. Rule 17Ad–22(e)(4)

As described in Part IV.A.4, the Commission is adopting Rule 17Ad–22(e)(4) with modifications. While some of these modifications are only technical or clarifying in nature, the burden estimates for the rule, as described below, have been modified from the preliminary estimates in the CCA Standards proposing release to reflect that Rules 17Ad–22(e)(13)(i) and (ii) are being adopted under Rule 17Ad–22(e)(4) as new Rules 17Ad–22(e)(4)(viii) and (ix).[822]

The Commission estimates that the PRA burdens for Rule 17Ad–22(e)(4) are more significant than in other cases under Rule 17Ad–22(e) and may require a respondent clearing agency to make substantial changes to its written rules, policies, and procedures pursuant to the rule.[823] In addition, Rule 17Ad–22(e)(4) will require a respondent clearing agency to make one-time systems adjustments so that it has the capability to test the sufficiency of its financial resources and to perform an annual model validation. As a result, the Commission preliminarily estimated that respondent clearing agencies would incur an aggregate one-time burden of 1,400 hours.[824] Because the modifications to Rule 17Ad–22(e)(4) noted above will require updating current policies and procedures or establishing new policies and

[810] *See* 17 CFR 204.17Ad–22(d)(8); *see also supra* Part II.C.2.

[811] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260.

[812] *See* CCA Standards proposing release, *supra* note 5, at 29568. This figure was calculated as follows: ((Assistant General Counsel for 12 hours) + (Compliance Attorney for 10 hours)) = 22 hours × 7 respondent clearing agencies = 154 hours.

The Commission notes that the CCA Standards proposing release correctly identified the number of initial burden hours as 154 hours but incorrectly stated the burden estimate for Assistant General Counsel as 24 rather than 12 hours. *See id.*

[813] This figure was calculated as follows: ((Assistant General Counsel for 14 hours) + (Compliance Attorney for 11 hours)) = 25 hours × 7 respondent clearing agencies = 175 hours.

[814] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[815] *See* CCA Standards proposing release, *supra* note 5, at 29568. This figure was calculated as follows: (Compliance Attorney for 4 hours) × 7 respondent clearing agencies = 28 hours.

[816] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[817] *See* CCA Standards proposing release, *supra* note 5, at 29568.

[818] *See* 17 CFR 240.17Ad–22(d).

[819] This figure was 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 × 7 respondent clearing agencies = 399 hours.

[820] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[821] This figure was calculated as follows: ((Compliance Attorney for 8 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 5 hours) + (Risk Management Specialist for 33 hours)) = 49 hours × 7 respondent clearing agencies = 343 hours.

[822] The Commission notes that because the modifications to Rules 17Ad–22(e)(4) and (13) reflect only the moving of requirements from Rule 17Ad–22(e)(13) to Rule 17Ad–22(e)(4), the burden hours across the two rules remains unchanged.

[823] *See supra* Part II.C.4.

[824] *See* CCA Standards proposing release, *supra* note 5, at 29568. This figure was calculated as follows: ((Assistant General Counsel for 60 hours) + (Compliance Attorney for 40 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)) = 200 hours × 7 respondent clearing agencies = 1,400 hours.

procedures to ensure compliance, the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of approximately 1,533 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[825]

Rule 17Ad–22(e)(4) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures developed in response to the rule and ongoing activities with respect to testing the sufficiency of its financial resources and performing the annual model validation. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[826] the Commission preliminarily estimated that the ongoing activities required by proposed Rule 17Ad–22(e)(4) would impose an aggregate annual burden on respondent clearing agencies of 420 hours.[827] Because the modifications to Rule 17Ad–22(e)(4) noted above will require updating current policies and procedures or establishing new policies and procedures to ensure compliance, the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(4) will impose an aggregate annual burden on respondent clearing agencies of 434 hours.[828]

5. Rule 17Ad–22(e)(5)

As described in Part IV.A.5, the Commission is adopting Rule 17Ad–22(e)(5) as proposed. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[829]

Rule 17Ad–22(e)(5) contains similar provisions to Rule 17Ad–22(d)(3).[830] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. For example, a respondent clearing agency may need to develop new policies and procedures for an annual review of the sufficiency of its collateral haircuts and concentration limits. Accordingly, based on the similar policies and procedures requirements in and the Commission's previous corresponding burden estimates for Rule 17Ad–22(d)(3),[831] the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of approximately 294 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[832]

Rule 17Ad–22(e)(5) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule and also requires an annual review of collateral haircuts and concentration limits. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[833] the Commission estimates that the ongoing activities required by the rule imposes an aggregate annual burden on respondent clearing agencies of 252 hours.[834] The Commission notes that the estimated ongoing burden for Rule 17Ad–22(e)(5) is similar to the initial one-time burden because the rule requires policies and procedures for a not-less-than-annual review of the sufficiency of a covered clearing agency's collateral haircuts and concentration limits.

6. Rule 17Ad–22(e)(6)

As described in Part IV.A.6, the Commission is adopting Rule 17Ad–22(e)(6) with modifications. Because these modifications are only technical or clarifying in nature, the Commission does not believe they will alter the PRA burdens described in the CCA Standards proposing release. Therefore, the burden estimates described below are unchanged from the CCA Standards proposing release.[835]

The Commission estimates that the PRA burdens for Rule 17Ad–22(e)(6) are more significant than in other cases under Rule 17Ad–22(e) and may require a respondent clearing agency to make substantial changes to its written rules, policies, and procedures pursuant to the rule.[836] For example, Rule 17Ad–22(e)(6) requires one-time systems adjustments to perform daily backtesting and monthly (or more frequent) sensitivity analyses. As a result, the Commission preliminarily estimated that respondent clearing agencies would incur an aggregate one-time burden of 1,080 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[837]

Rule 17Ad–22(e)(6) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule and activities associated with daily backtesting, monthly (or more frequent) sensitivity analyses, and annual model validation. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[838] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(6) impose an aggregate annual burden on respondent clearing agencies of 360 hours.[839]

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[825] This figure was 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 × 7 respondent clearing agencies = 1,533 hours.

[826] *See* Clearing Agency Standards adopting release, supra note 5, at 66260–63.

[827] *See* CCA Standards proposing release, *supra* note 5, at 29569. This figure was calculated as follows: ((Compliance Attorney for 24 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours) + (Risk Management Specialist for 30 hours)) = 60 hours × 7 respondent clearing agencies = 420 hours.

[828] This figure was calculated as follows: ((Compliance Attorney for 26 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours) + (Risk Management Specialist for 30 hours)) = 62 hours × 7 respondent clearing agencies = 434 hours.

[829] *See* CCA Standards proposing release, *supra* note 5, at 29569.

[830] *See* 17 CFR 240.17Ad–22(d)(3); *see also supra* Part II.C.5.

[831] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[832] This figure was 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 × 7 respondent clearing agencies = 294 hours.

[833] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[834] This figure was calculated as follows: ((Compliance Attorney for 6 hours) + (Risk Management Specialist for 30 hours)) = 36 hours × 7 respondent clearing agencies = 252 hours.

[835] *See* CCA Standards proposing release, *supra* note 5, at 29569.

[836] *See id.* at 29569 & n.469; *see also supra* Part II.C.6.

[837] This figure was 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 × 6 respondent clearing agencies = 1,080 hours.

[838] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[839] This figure was calculated as follows: ((Compliance Attorney for 24 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours) + (Risk Management Specialist for 30 hours)) = 60 hours × 6 respondent clearing agencies = 360 hours.

7. Rule 17Ad–22(e)(7)

As described in Part IV.A.7, the Commission is adopting Rule 17Ad–22(e)(7) with modifications. Because these modifications are only technical or clarifying in nature, the Commission does not believe they will alter the PRA burdens described in the CCA Standards proposing release. Therefore, the burden estimates described below are unchanged from the CCA Standards proposing release.[840]

The Commission estimates that the PRA burdens for Rule 17Ad–22(e)(7) are more significant than in other cases under Rule 17Ad–22(e) and may require a respondent clearing agency to make substantial changes to its written rules, policies, and procedures pursuant to the rule.[841] For example, Rule 17Ad–22(e)(7) requires one-time systems adjustments to test the sufficiency of its liquid resources, test its access to liquidity providers, and perform an annual model validation. As a result, the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of 2,310 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[842]

Rule 17Ad–22(e)(7) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to policies and procedures created in response to the rule as well as activities related to testing the sufficiency of its liquidity resources, testing access to its liquidity providers, and performing an annual model validation. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[843] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(7) impose an aggregate annual burden on respondent clearing agencies of 896 hours.[844]

8. Rule 17Ad–22(e)(8)

As described in Part IV.A.8, the Commission is adopting Rule 17Ad–22(e)(8) with one modification. Because these modifications are only technical or clarifying in nature, the Commission does not believe they will alter the PRA burdens described in the CCA Standards proposing release. Therefore, the burden estimates described below are unchanged from the CCA Standards proposing release.[845]

Rule 17Ad–22(e)(8) contains substantially similar provisions to Rule 17Ad–22(d)(12).[846] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(12),[847] the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of approximately 84 hours to review and revise existing policies and procedures.[848]

Rule 17Ad–22(e)(8) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[849] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(8) impose an aggregate annual burden on respondent clearing agencies of approximately 35 hours.[850]

9. Rule 17Ad–22(e)(9)

As described in Part IV.A.9, the Commission is adopting Rule 17Ad–22(e)(9) as proposed. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[851]

Rule 17Ad–22(e)(9) contains substantially similar provisions to Rule 17Ad–22(d)(5).[852] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(5),[853] the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of approximately 84 hours to review and revise existing policies and procedures.[854]

Rule 17Ad–22(e)(9) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[855] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(9) impose an aggregate annual burden on respondent clearing agencies of approximately 35 hours.[856]

10. Rule 17Ad–22(e)(10)

As described in Part IV.A.10, the Commission is adopting Rule 17Ad–22(e)(10) as proposed. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[857]

Rule 17Ad–22(e)(10) contains substantially similar provisions to Rule 17Ad–22(d)(15).[858] The Commission

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[840] *See* CCA Standards proposing release, *supra* note 5, at 29569–70.

[841] *See id.* at 29569 & n.473; *see also supra* Part II.C.7.

[842] This figure was 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 × 7 respondent clearing agencies = 2,310 hours.

[843] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[844] This figure was calculated as follows: ((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 × 7 respondent clearing agencies = 896 hours.

[845] *See* CCA Standards proposing release, *supra* note 5, at 29570.

[846] *See* 17 CFR 240.17Ad–22(d)(12); *see also supra* Part II.C.8.

[847] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260.

[848] This figure was 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 × 7 respondent clearing agencies = 84 hours.

[849] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[850] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[851] *See* CCA Standards proposing release, *supra* note 5, at 29570.

[852] *See* 17 CFR 240.17Ad–22(d)(5); *see also supra* Part II.C.9.

[853] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260.

[854] This figure was 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 × 7 respondent clearing agencies = 84 hours.

[855] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[856] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[857] *See* CCA Standards proposing release, *supra* note 5, at 29570.

[858] *See* 17 CFR 240.17Ad–22(d)(15); *see also supra* Part II.C.10.

therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(15),[859] the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of approximately 84 hours to review and revise existing policies and procedures.[860]

Rule 17Ad–22(e)(10) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[861] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(10) impose an aggregate annual burden on respondent clearing agencies of approximately 35 hours.[862]

11. Rule 17Ad–22(e)(11)

As described in Part IV.A.11, the Commission is adopting Rule 17Ad–22(e)(11) as proposed. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[863]

With respect to Rule 17Ad–22(e)(11), a respondent clearing agency is a registered clearing agencies that provides CSD services. Because Rule 17Ad–22(e)(11) contains similar provisions to Rule 17Ad–22(d)(10),[864] the Commission expects that such clearing agencies generally have written rules, policies, and procedures similar to the requirements imposed under the rule. Rule 17Ad–22(e)(11) also imposes additional requirements that do not appear in Rule 17Ad–22, and accordingly a covered clearing agency providing CSD services may need to review and revise its policies and procedures or create new policies and procedures, as necessary, as necessary, pursuant to the rule. Based on the similar policies and procedures requirements and the corresponding burden estimates made by the Commission for Rule 17Ad–22(d)(10),[865] the Commission estimates that the respondent clearing agency will incur a one-time burden of approximately 55 hours to review and revise existing policies and procedures and create new policies and procedures, as necessary.[866]

Rule 17Ad–22(e)(11) also imposes ongoing burdens on the respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[867] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(11) impose a total annual burden on the respondent clearing agency of approximately 8 hours.[868]

12. Rule 17Ad–22(e)(12)

As described in Part IV.A.12, the Commission is adopting Rule 17Ad–22(e)(12) as proposed. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[869]

Rule 17Ad–22(e)(12) contains substantially similar provisions to Rule 17Ad–22(d)(13).[870] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(13),[871] the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of approximately 84 hours to review and revise existing policies and procedures.[872]

Rule 17Ad–22(e)(12) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[873] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(12) impose an aggregate annual burden on respondent clearing agencies of approximately 35 hours.[874]

13. Rule 17Ad–22(e)(13)

As described in Part IV.A.13, the Commission is adopting Rule 17Ad–22(e)(13) with modifications. The burden estimates for the rule, as described below, have been modified from the preliminary estimates in the CCA Standards proposing release to reflect that Rules 17Ad–22(e)(13)(i) and (ii) are being adopted under Rule 17Ad–22(e)(4) as new Rules 17Ad–22(e)(4)(viii) and (ix).[875]

Rule 17Ad–22(e)(13) requires a respondent clearing agency to have written policies and procedures reasonably designed to address participant default and ensure that the clearing agency can contain losses and liquidity demands and continue to meet its obligations. Rule 17Ad–22(e)(13) contains similar provisions to Rule 17Ad–22(d)(11) but also imposes additional requirements that do not appear in Rule 17Ad–22.[876] The Commission therefore expects that a respondent clearing agency may have written rules, policies, and procedures similar to some requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and

[859] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260.

[860] This figure was 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 × 7 respondent clearing agencies = 84 hours.

[861] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[862] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[863] *See* CCA Standards proposing release, *supra* note 5, at 29570–71.

[864] *See* 17 CFR 240.17Ad–22(d)(10); *see also supra* Part II.B.11.

[865] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[866] This figure was calculated as follows: ((Assistant General Counsel for 20 hours) + (Compliance Attorney for 10 hours) + (Intermediate Accountant for 15 hours) + (Senior Business Analyst for 5 hours) + (Computer Operations Manager for 5 hours)) = 55 hours × 1 respondent clearing agency = 55 hours.

[867] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[868] This figure was calculated as follows: (Compliance Attorney for 8 hours) × 1 respondent clearing agency = 8 hours.

[869] *See* CCA Standards proposing release, *supra* note 5, at 29571.

[870] *See* 17 CFR 240.17Ad–22(d)(13); *see also supra* Part II.C.12.

[871] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260.

[872] This figure was 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 × 7 respondent clearing agencies = 84 hours.

[873] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[874] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[875] *See supra* note 822.

[876] *See* 17 CFT 240.17Ad–22(d)(11); *see also supra* Part II.C.13.

revising existing policies and procedures pursuant to Rule 17Ad–22(e)(13) and creating new policies and procedures, as necessary. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(11),[877] the Commission preliminarily estimated that respondent clearing agencies would incur an aggregate one-time burden of approximately 420 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[878] Because the modifications to Rule 17Ad–22(e)(13) noted above will require updating current policies and procedures or establishing new policies and procedures to ensure compliance, the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of approximately 287 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[879]

Rule 17Ad–22(e)(13) also imposes ongoing burdens on a respondent clearing agency. The rule requires policies and procedures for the annual review and testing of a clearing agency's default policies and procedures. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[880] the Commission preliminarily estimated that the ongoing activities required by Rule 17Ad–22(e)(13) would impose an aggregate annual burden on respondent clearing agencies of approximately 63 hours.[881] Because the modifications to Rule 17Ad–22(e)(13) noted above will require updating current policies and procedures or establishing new policies and procedures to ensure compliance, the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(13) will impose an aggregate annual burden on respondent clearing agencies of 49 hours.[882]

14. Rule 17Ad–22(e)(14)

As described in Part IV.A.14, the Commission is adopting Rule 17Ad–22(e)(14) as proposed. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[883]

With respect to Rule 17Ad–22(e)(14), a respondent clearing agency is a registered clearing agency that provides CCP services for security-based swaps. Such clearing agencies generally have written policies and procedures regarding the segregation and portability of customer positions and collateral as a result of applicable rules and regulations notwithstanding Rule 17Ad–22.[884] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, the Commission estimates that Rule 17Ad–22(e)(14) imposes on respondent clearing agencies an aggregate one-time burden of 72 hours to review and revise existing policies and procedures.[885]

Rule 17Ad–22(e)(14) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[886] the Commission believes that the ongoing activities required by Rule 17Ad–22(e)(14) impose an aggregate annual burden on respondent clearing agencies of approximately 12 hours.[887]

15. Rule 17Ad–22(e)(15)

As described in Part IV.A.15, the Commission is adopting Rule 17Ad–22(e)(15) as proposed. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[888]

Because Rule 17Ad–22(d) does not include requirements related to general business risk, the Commission estimates that the PRA burdens for Rule 17Ad–22(e)(15) are more significant than in other cases under Rule 17Ad–22(e) and may require a respondent clearing agency to make substantial changes to its written rules, policies, and procedures pursuant to the rule.[889] The Commission estimates that Rule 17Ad–22(e)(15) will impose an aggregate one-time burden on respondent covered clearing agencies of 1,470 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[890]

Rule 17Ad–22(e)(15) also imposes ongoing burdens on a respondent clearing agency. Rule 17Ad–22(e)(15) requires a respondent clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a viable plan, approved by its board of directors and updated at least annually, for raising additional equity in the event that the covered clearing agency's liquid net assets fall below the level required by the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[891] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(15) impose an aggregate annual burden on respondent clearing agencies of 336 hours.[892]

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[877] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[878] *See* CCA Standards proposing release, *supra* note 5, at 29571. This figure was calculated as follows: ((Assistant General Counsel for 20 hours) + (Compliance Attorney for 16 hours) + (Senior Business Analyst for 12 hours) + (Computer Operations Manager for 12 hours)) = 60 hours × 7 respondent clearing agencies = 420 hours.

[879] This figure was 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 × 7 respondent clearing agencies = 287 hours.

[880] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[881] *See* CCA Standards proposing release, *supra* note 5, at 29571. This figure was calculated as follows: (Compliance Attorney for 9 hours) × 7 respondent clearing agencies = 63 hours.

[882] This figure was calculated as follows: (Compliance Attorney for 7 hours) × 7 respondent clearing agencies = 49 hours.

[883] *See* CCA Standards proposing release, *supra* note 5, at 29571–72.

[884] *See, e.g.,* 77 FR 6336 (Feb. 7, 2012) (CFTC adopting rules imposing LSOC on DCOs for cleared swaps); *see also supra* Part II.C.14. Because the respondent clearing agencies are subject to the CFTC's segregation and portability requirements for cleared swaps, the Commission expects that the burden imposed by Rule 17Ad–22(e)(14) will be limited.

[885] This figure was 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 × 2 respondent clearing agency that provide, or would potentially provide, CCP services with respect to security-based swaps = 72 hours.

[886] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[887] This figure was calculated as follows: (Compliance Attorney for 6 hours) × 2 respondent clearing agencies = 12 hours

[888] *See* CCA Standards proposing release, *supra* note 5, at 29571.

[889] *See* 17 CFR 240.17Ad–22(d); *see also supra* Part II.C.15.

[890] This figure was 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 × 7 respondent clearing agencies = 1,470 hours.

[891] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[892] This figure was calculated as follows: ((Compliance Attorney for 42 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours)) = 48 hours × 7 respondents clearing agencies = 336 hours.

16. Rule 17Ad–22(e)(16)

As described in Part IV.A.16, the Commission is adopting Rule 17Ad–22(e)(16) as proposed. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[893]

Rule 17Ad–22(e)(16) contains substantially similar provisions to Rule 17Ad–22(d)(3).[894] The Commission therefore expects that a respondent clearing agency has written rules, policies, and procedures substantially similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing current policies and procedures and revising them, where appropriate, pursuant to the rule. Accordingly, based on the similar provisions and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(3),[895] the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of approximately 140 hours to review and revise existing policies and procedures.[896]

Rule 17Ad–22(e)(16) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[897] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(16) impose an aggregate annual burden on respondent clearing agencies of 42 hours.[898]

17. Rule 17Ad–22(e)(17)

As described in Part IV.A.17, the Commission is adopting Rule 17Ad–22(e)(17) with one modification. Because this modification is only technical or clarifying in nature, the Commission does not believe they will alter the PRA burdens described in the CCA Standards proposing release. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[899]

Rule 17Ad–22(e)(17) contains similar provisions to Rule 17Ad–22(d)(4) but also imposes additional requirements that do not appear in Rule 17Ad–22.[900] The Commission therefore expects that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(4),[901] the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of 196 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[902]

Rule 17Ad–22(e)(17) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[903] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(17) impose an aggregate annual burden on respondent clearing agencies of 112 hours.[904]

18. Rule 17Ad–22(e)(18)

As described in Part IV.A.18, the Commission is adopting Rule 17Ad–22(e)(18) as proposed. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[905]

Rule 17Ad–22(e)(18) contains similar provisions to Rules 17Ad–22(b)(5) through (7) and (d)(2).[906] The Commission therefore expects that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rules 17Ad–22(b)(5) through (7) and (d)(2),[907] the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of 308 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[908]

Rule 17Ad–22(e)(18) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[909] the Commission estimates that the ongoing activities required by the rule impose an aggregate annual burden on respondent clearing agencies of 49 hours.[910]

19. Rule 17Ad–22(e)(19)

As described in Part IV.A.19, the Commission is adopting Rule 17Ad–22(e)(19) as proposed. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[911]

Tiered participation arrangements are not addressed by Rule 17Ad–22(d). The Commission therefore expects that a respondent clearing agency may need to create policies and procedures pursuant to Rule 17Ad–22(e)(19).[912] The

[893] *See* CCA Standards proposing release, *supra* note 5, at 29572.

[894] *See* 17 CFR 240.17Ad–22(d)(3); *see also supra* Part II.C.16.

[895] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260.

[896] This figure was 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 × 7 respondent clearing agencies = 140 hours.

[897] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[898] This figure was calculated as follows: (Compliance Attorney for 6 hours) × 7 respondent clearing agencies = 42 hours.

[899] *See* CCA Standards proposing release, *supra* note 5, at 29572–73.

[900] *See* 17 CFR 240.17Ad–22(d)(4); *see also supra* Part II.C.17.

[901] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[902] This figure was 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 × 7 respondent clearing agency = 196 hours.

[903] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[904] This figure was calculated as follows: (Compliance Attorney for 6 hours) × 7 respondent clearing agencies = 42 hours.

[905] *See* CCA Standards proposing release, *supra* note 5, at 29573.

[906] *See* 17 CFR 240.17Ad–22(b)(5)–(7), (d)(2); *see also supra* Part II.C.18.

[907] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[908] This figure was 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 × 7 respondent clearing agencies = 308 hours.

[909] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[910] This figure was calculated as follows: (Compliance Attorney for 7 hours) × 7 respondent clearing agencies = 49 hours.

[911] *See* CCA Standards proposing release, *supra* note 5, at 29573.

[912] *See* 17 CFR 240.17Ad–22(d); *see also supra* Part II.C.19.

Commission estimates that Rule 17Ad–22(e)(19) imposes an aggregate one-time burden on respondent clearing agencies of 308 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[913]

Rule 17Ad–22(e)(19) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[914] the Commission estimates that the ongoing activities required by the rule impose an annual aggregate burden on respondent clearing agencies of 49 hours.[915]

20. Rule 17Ad–22(e)(20)

As described in Part IV.A.13, the Commission is adopting Rule 17Ad–22(e)(20) with one modification. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[916]

Rule 17Ad–22(e)(20) contains similar provisions to Rule 17Ad–22(d)(7) but also adds additional requirements that do not appear in Rule 17Ad–22(d).[917] The Commission therefore expects that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, based on the similar policies and procedures requirements and compliance burdens associated with Rule 17Ad–22(d)(7),[918] the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of approximately 308 hours to review and update existing policies and procedures.[919] Rule 17Ad–22(e)(20) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[920] the Commission estimates that the ongoing activities required by the rule impose an aggregate annual burden on respondent clearing agencies of 49 hours.[921]

21. Rule 17Ad–22(e)(21)

As described in Part IV.A.21, the Commission is adopting Rule 17Ad–22(e)(21) with one modification. Because this modification is only technical or clarifying in nature, the Commission does not believe they will alter the PRA burdens described in the CCA Standards proposing release. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[922]

Rule 17Ad–22(e)(21) contains similar provisions to Rule 17Ad–22(d)(6) but also adds additional requirements that do not appear in Rule 17Ad–22(d).[923] The Commission therefore expects that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(6),[924] the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of approximately 224 hours to review and revise existing policies and procedures.[925]

Rule 17Ad–22(e)(21) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[926] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(21) impose an aggregate annual burden on respondent clearing agencies of 77 hours.[927]

22. Rule 17Ad–22(e)(22)

As described in Part IV.A.22, the Commission is adopting Rule 17Ad–22(e)(22) as proposed. The burden estimates for the rule are unchanged from the CCA Standards proposing release.[928]

Although Rule 17Ad–22(d) does not include any requirements with provisions similar to Rule 17Ad–22(e)(22), the Commission understands that covered clearing agencies currently use the relevant internationally accepted communication procedures and standards and therefore expects that a respondent clearing agency may need to make only limited changes to its policies and procedures under the rule.[929] Accordingly, the Commission estimates that the rule imposes an aggregate one-time burden on respondent clearing agencies of 168 hours to review and revise existing policies and procedures.[930]

Rule 17Ad–22(e)(22) also imposes ongoing burdens on a respondent clearing agency. It requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for

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[913] This figure was 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 × 7 respondent clearing agencies = 308 hours.

[914] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260.

[915] This figure was calculated as follows: (Compliance Attorney for 7 hours) × 7 respondent clearing agencies = 49 hours.

[916] *See* Clearing Agency Standards adopting release, *supra* note 5, at 29573–74.

[917] *See*17 CFR 240.17Ad–22(d)(7); *see also supra* Part II.C.20.

[918] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[919] *See* CCA Standards proposing release, *supra* note 5, at 29573. This figure was calculated as follows: ((Assistant General Counsel for 10 hours) + (Compliance Attorney for 7 hours) + (Senior Business Analyst for 5 hours) + (Computer Operations Manager for 15 hours) + (Chief Compliance Officer for 5 hours) + (Senior Programmer for 2 hours) = 44 hours × 7 respondent clearing agencies = 308 hours.

[920] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[921] This figure was calculated as follows: (Compliance Attorney for 7 hours) × 7 respondent clearing agencies = 49 hours.

[922] *See* CCA Standards proposing release, *supra* note 5, at 29574.

[923] *See* 17 CFR 240.17Ad–22(d)(6); *see also supra* Part II.C.21.

[924] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[925] This figure was calculated as follows: ((Assistant General Counsel for 10 hours) + (Compliance Attorney for 7 hours) + (Senior Business Analyst for 5 hours) + (Computer Operations Manager for 10 hours)) = 32 hours × 7 respondent clearing agencies = 224 hours.

[926] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[927] This figure was calculated as follows: ((Compliance Attorney for 5 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours) = 11 hours × 7 respondent clearing agencies = 77 hours.

[928] *See* CCA Standards proposing release, *supra* note 5, at 29574.

[929] *See* 17 CFR 240.17Ad–22(d); *see also supra* Part II.C.22.

[930] This figure was 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 × 7 respondent clearing agencies = 168 hours.

ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[931] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(22) impose an aggregate annual burden on respondent clearing agencies of 35 hours.[932]

23. Rule 17Ad–22(e)(23)

As described in Part IV.A.23, the Commission is adopting Rule 17Ad–22(e)(23) with modifications. Because these modifications are only technical or clarifying in nature, the Commission does not believe they will alter the PRA burdens described in the CCA Standards proposing release. Therefore, the burden estimates described below are unchanged from the CCA Standards proposing release.[933]

Rule 17Ad–22(e)(23) contains similar requirements to Rule 17Ad–22(d)(9) but also imposes substantial new requirements.[934] The Commission therefore expects that, although a respondent clearing agency may have written rules, policies and procedures similar to those required by some provisions under the rule, a respondent clearing agency will need to create new policies and procedures to address the other provisions. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(9),[935] the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of 966 hours to review and revise existing policies and procedures and to create policies and procedures, as necessary.[936]

Rule 17Ad–22(e)(23) also imposes ongoing burdens on a respondent clearing agency. The rule requires ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to Rule 17Ad–22,[937] the Commission estimates that the ongoing activities required by Rule 17Ad–22(e)(23) impose an aggregate annual burden on respondent clearing agencies of 238 hours.[938]

24. Total Burden for Rule 17Ad–22(e)

The Commission preliminarily estimated that respondent clearing agencies would incur an aggregate initial burden under Rule 17Ad–22(e) of 10,664 hours and an aggregate ongoing burden of 3,460 hours.[939] In light of the modifications made by the Commission in adopting Rule 17Ad–22(e) described above that will require updating current policies and procedures or establishing new policies and procedures to ensure compliance with the rule, the Commission estimates that respondent clearing agencies will incur an aggregate initial burden of 10,776 hours under Rule 17Ad–22(e) and an aggregate ongoing burden of 3,537 hours.

25. Total Burden for Rule 17Ab2–2

As discussed in Part IV.A.24, Rule 17Ab2–2 establishes procedures for the Commission to make determinations affecting covered clearing agencies in certain circumstances.[940] Because such determinations may be made upon request of a clearing agency or its members, the respondents would have the burdens of preparing such requests for submission to the Commission. To the extent such determinations are carried out by the Commission on its own initiative under Rule 17Ab2–2, the Commission expects that the PRA burdens on a respondent clearing agency would be limited. Accordingly, based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[941] the Commission preliminarily estimated that respondent clearing agencies would incur an aggregate one-time burden of approximately 24 hours to draft and review a determination request to the Commission.[942] In consideration of the modifications made by the Commission in adopting Rule 17Ab2–2 as described above, the Commission estimates that respondent clearing agencies will incur an aggregate one-time burden of approximately 20 hours to draft and review a determination request to the Commission.[943]

26. Total Burden for Rule 17Ad–22(c)(1)

As discussed in Part IV.A.25, the modifications to Rule 17Ad–22(c)(1) impose a recordkeeping requirement on registered clearing agencies that are covered clearing agencies. With respect to Rule 17Ad–22(c)(1), a respondent clearing agency is a registered clearing agency that provides CCP services. In the Clearing Agency Standards release, the Commission estimated that respondent clearing agencies would incur both initial and ongoing burdens under Rule 17Ad–22(c)(1). Specifically, the Commission estimated that Rule 17Ad–22(c)(1) would impose on a respondent clearing agency a one-time burden of 100 hours.[944] In light of the modifications to Rule 17Ad–22(c)(1) that affect covered clearing agencies, the Commission believes that respondent clearing agencies would incur an aggregate one-time burden of 660 hours to perform adjustments needed to synthesize and format existing information in a manner sufficient to explain the methodology used to meet the requirements of Rule 17Ad–22(c)(1).[945]

In addition, the Commission estimated that Rule 17Ad–22(c)(1) would impose ongoing burdens on a respondent clearing agency of three hours per respondent clearing agency per quarter, amounting to an aggregate annual burden of 12 hours.[946] In light of the modifications to Rule 17Ad–22(c)(1) that affect covered clearing agencies, the Commission believes that the ongoing activities required by Rule 17Ad–22(c)(1) will impose an aggregate annual burden on respondent clearing agencies of 120 hours to perform adjustments

[931] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260.

[932] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[933] *See* CCA Standards proposing release, *supra* note 5, at 29574.

[934] *See* 17 CFR 240.17Ad–22(d)(9); *see also supra* Part II.C.23.

[935] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[936] This figure was 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 × 7 respondent clearing agencies = 966 hours.

[937] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260–63.

[938] This figure was calculated as follows: (Compliance Attorney for 34 hours) × 7 respondent clearing agencies = 238 hours.

[939] *See* CCA Standards proposing release, *supra* note 5, at 29574.

[940] *See supra* Part II.D.

[941] *See* Clearing Agency Standards adopting release, *supra* note 5, at 66260.

[942] *See* CCA Standards proposing release, *supra* note 5, at 29575. This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Staff Attorney for 4 hours) + (Outside Counsel for 6 hours)) = 12 hours × 2 respondent clearing agencies = 24 hours.

[943] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Staff Attorney for 3 hours) + (Outside Counsel for 5 hours)) = 10 hours × 2 respondent clearing agencies = 20 hours.

[944] *See* Clearing Agency Standards adopting release, *supra* note 5, 66261–62. This figure was calculated as follows: ((Chief Compliance Officer at 40 hours) + (Computer Operations Department Manager at 40 hours) + (Senior Programmer at 20 hours)) = 100 hours.

[945] This figure was calculated as follows: ((Chief Compliance Officer at 44 hours) + (Computer Operations Department Manager at 44 hours) + (Senior Programmer at 22 hours)) = 110 hours × 6 respondent clearing agencies = 660 hours.

[946] *See* Clearing Agency Standards adopting release, *supra* note 5, 66262. This figure was calculated as follows: ((Compliance Attorney at 1 hour) + (Computer Operations Department Manager at 2 hours)) = 3 hours per quarter × 4 quarters per year = 12 hours.

needed to synthesize and format existing information in a manner sufficient to explain the methodology used to meet the requirements of the rule.[947]

D. Collection of Information Is Mandatory

The collection of information requirement for Rule 17Ad–22(e) is mandatory. The collection of information requirement for Rule 17Ab2–2 is voluntary.

E. Confidentiality

The Commission expects that the policies and procedures developed pursuant to Rule 17Ad–22(e) would be communicated to the participants, as applicable, of each respondent clearing agency and, as applicable, the public. A respondent clearing agency would be required to preserve such policies and procedures in accordance with, and for the periods specified in, Rules 17a–1 and 17a–4(e)(7) under the Exchange Act.[948] 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.[949]

To the extent that the Commission receives confidential information pursuant to the collection of information under Rule 17Ab2–2, the Commission also expects such information would be kept confidential subject to the provisions of applicable law.[950]

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires the Commission, in promulgating rules, to consider the impact of those rules on small entities.[951] Section 603(a) of the Administrative Procedure Act,[952] 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.'' [953] The Commission certified in the CCA Standards proposing release, pursuant to Section 605(b) of the RFA,[954] that the proposed rules would not, if adopted, have a significant impact on a substantial number of small entities. The Commission received no comments on this certification.

A. Registered Clearing Agencies

The amendments to Rule 17Ad–22 and Rule 17Ab2–2 apply to covered clearing agencies, which would include registered clearing agencies that are designated clearing agencies, complex risk profile clearing agencies, or clearing agencies that otherwise have been determined to be covered clearing agencies by the Commission. For the purposes of Commission rulemaking and as applicable to the amendments to Rule 17Ad–22 and new Rule 17Ab2–2, 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.[955]

Based on the Commission's existing information about the clearing agencies currently registered with the Commission,[956] the Commission believes that such registered clearing agencies exceed the thresholds defining ''small entities'' set out above. While other clearing agencies may 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 Exchange Act Rule 0–10.[957] Further, registered clearing agencies are only subject to the requirements of Rule 17Ad–22(e) if they meet the definition of a covered clearing agency, as described in Part II.A. Accordingly, the Commission believes that any such registered clearing agencies will exceed the thresholds for ''small entities'' set forth in Exchange Act Rule 0–10.

B. Certification

For the reasons described above, the Commission certifies that the amendments to Rule 17Ad–22 and new Rule 17Ab2–2 will not have a significant economic impact on a substantial number of small entities.

VI. 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 and new Rule 17Ab2–2.

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

■ 1. The general authority citation for part 240 continues to read, and the sectional authority for § 240.17Ad–22 is revised to read, 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, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*v–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 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.

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[947] This figure was calculated as follows: ((Compliance Attorney at 2 hours) + (Computer Operations Department Manager at 3 hours)) = 5 hours per quarter × 4 quarters per year = 20 hours × 6 respondent clearing agencies = 120 hours.

[948] 17 CFR 240.17a–1 and 17a–4(e)(7).

[949] *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).

[950] *See id.*

[951] *See* 5 U.S.C. 601 *et seq.*

[952] *See* 5 U.S.C. 603(a).

[953] 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 are set forth in Rule 0–10, 17 CFR 240.0–10.

[954] *See* 5 U.S.C. 605(b).

[955] *See* 17 CFR 240.0–10(d).

[956] In 2015, DTCC processed $1.508 quadrillion in financial transactions. Within DTCC, DTC settled $112.3 trillion of securities and held securities valued at $45.4 trillion, NSCC processed an average daily value of $976.6 billion in equity securities, and FICC cleared $917.1 trillion of transactions in government securities and $48.2 trillion of transactions in agency mortgage-backed securities. *See* DTCC, 2015 Annual Report, *available at http://www.dtcc.com/annuals/2015/index.php.* OCC cleared more than 4.1 billion contracts and held margin of $98.3 billion at the end of 2015. *See* OCC, 2015 Annual Report, *available at http://www.theocc.com/components/docs/about/annual-reports/occ-2015-annual-report.pdf.* In addition, Intercontinental Exchange (''ICE'') averaged daily trade volume of 9.3 million and revenues of $3.3 billion in 2015. *See* ICE at a glance, *available at https://www.theice.com/publicdocs/ICE_at_a_glance.pdf.*

[957] *See* 17 CFR 240.0–10(d). The Commission based this determination on its review of public sources of financial information about registered clearing agencies.

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

* * * * *

■ 2. Section 240.17Ab2–2 is added to read as follows:

§ 240.17Ab2–2 Determinations affecting covered clearing agencies.

(a) The Commission may, if it deems appropriate, upon application by any clearing agency or member of a clearing agency, or on its own initiative, determine whether a covered clearing agency is systemically important in multiple jurisdictions. In determining whether a covered clearing agency is systemically important in multiple jurisdictions, the Commission may consider:

(1) Whether the covered clearing agency is a designated clearing agency; and

(2) Whether the clearing agency has been determined to be systemically important by one or more jurisdictions other than the United States through a process that includes consideration of whether the foreseeable effects of a failure or disruption of the designated clearing agency could threaten the stability of each relevant jurisdiction's financial system.

(b) The Commission may, if it deems appropriate, determine whether any of the activities of a clearing agency providing central counterparty services, in addition to clearing agencies registered with the Commission for the purpose of clearing security-based swaps, have a more complex risk profile. In determining whether a clearing agency's activity has a more complex risk profile, the Commission may consider whether the clearing agency clears financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults.

(c) The Commission may, if it deems appropriate, upon application by any clearing agency or member of a clearing agency, or on its own initiative, determine whether to rescind any determination made pursuant to paragraph (a) or (b) of this section. In determining whether to rescind any such determination, the Commission may consider a change in circumstances such that the covered clearing agency no longer meets the criteria supporting the determination in effect.

(d) The Commission shall publish notice of its intention to consider making a determination under paragraph (a), (b), or (c) of this section, together with a brief statement of the grounds under consideration therefor, and provide at least a 30-day public comment period prior to any such determination, giving all interested persons an opportunity to submit written data, views, and arguments concerning such proposed determination. The Commission may provide the clearing agency subject to the proposed determination opportunity for hearing regarding the proposed determination.

(e) Notice of determinations under paragraph (a), (b), or (c) of this section shall be given by prompt publication thereof, together with a statement of written reasons therefor.

(f) For purposes of this rule, the terms *covered clearing agency, designated clearing agency,* and *systemically important in multiple jurisdictions* shall have the meanings set forth in § 240.17Ad–22(a).

■ 3. Amend § 240.17Ad–22 by revising paragraphs (a) and (c)(1), and (d) introductory text and adding paragraphs (e) and (f) to read as follows:

§ 240.17Ad–22 Standards for clearing agencies.

(a) *Definitions.* For purposes of this section:

(1) *Backtesting* means an ex-post comparison of actual outcomes with expected outcomes derived from the use of margin models.

(2) *Central counterparty* means a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer.

(3) *Central securities depository services* means services of 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)).

(4) *Clearing agency involved in activities with a more complex risk profile* means a clearing agency registered with the Commission under Section 17A of the Act (15 U.S.C. 78q–1) that:

(i) Provides central counterparty services for security-based swaps;

(ii) Has been determined by the Commission to be involved in activities with a more complex risk profile at the time of its initial registration; or

(iii) Is subsequently determined by the Commission to be involved in activities with a more complex risk profile pursuant to § 240.17Ab2–2(b).

(5) *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.*).

(6) *Designated clearing agency* means a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q–1) that is designated systemically important by the Financial Stability Oversight Council pursuant to the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*) and for which the Commission is 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.*).

(7) *Financial market utility* has the same meaning as defined in Section 803(6) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5462(6)).

(8) *Link* means, for purposes of paragraph (e)(20) of this section, a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading markets that connect them directly or indirectly for the purposes of participating in settlement, cross margining, expanding their services to additional instruments or participants, or for any other purposes material to their business.

(9) *Model validation* means an evaluation of the performance of each material risk management model used by a covered clearing agency (and the related parameters and assumptions associated with such models), including initial margin models, liquidity risk models, and models used to generate clearing or guaranty fund requirements, performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models or policies being validated.

(10) *Net capital* as used in paragraph (b)(7) of this section means net capital as defined in § 240.15c3–1 for broker-dealers or any similar risk adjusted capital calculation for all other prospective clearing members.

(11) *Normal market conditions* as used in paragraphs (b)(1) and (2) of this section means conditions in which the expected movement of the price of cleared securities would produce changes in a clearing agency's exposures to its participants that would be expected to breach margin requirements or other risk control mechanisms only one percent of the time.

(12) *Participant family* means that if a participant directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another participant then the affiliated

participants shall be collectively deemed to be a single participant family for purposes of paragraphs (b)(3), (d)(14), (e)(4), and (e)(7) of this section.

(13) *Potential future exposure* means the maximum exposure estimated to occur at a future point in time with an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure.

(14) *Qualifying liquid resources* means, for any covered clearing agency, the following, in each relevant currency:

(i) Cash held either at the central bank of issue or at creditworthy commercial banks;

(ii) Assets that are readily available and convertible into cash through prearranged funding arrangements, such as:

(A) Committed arrangements without material adverse change provisions, including:

(*1*) Lines of credit;

(*2*) Foreign exchange swaps; and

(*3*) Repurchase agreements; or

(B) Other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and

(iii) Other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank in a jurisdiction that permits said pledges or other transactions by the covered clearing agency.

(15) *Security-based swap* means a security-based swap as defined in Section 3(a)(68) of the Act (15 U.S.C. 78c(a)(68)).

(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. Sensitivity analysis must use actual portfolios and, where applicable, hypothetical portfolios that reflect the characteristics of proprietary positions and customer positions;

(ii) When performed by or on behalf of a covered clearing agency involved in activities with a more complex risk profile, considers the most volatile relevant periods, where practical, that have been experienced by the markets served by the clearing agency; and

(iii) 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.

(17) *Stress testing* means the estimation of credit or liquidity exposures that would result from the realization of potential stress scenarios, such as extreme price changes, multiple defaults, or changes in other valuation inputs and assumptions.

(18) *Systemically important in multiple jurisdictions* means, with respect to a covered clearing agency, a covered clearing agency that has been determined by the Commission to be systemically important in more than one jurisdiction pursuant to § 240.17Ab2–2.

(19) *Transparent* means, for the purposes of paragraphs (e)(1), (2), and (10) of this section, to the extent consistent with other statutory and Commission requirements on confidentiality and disclosure, that documentation required under paragraphs (e)(1), (2), and (10) is disclosed to the Commission and, as appropriate, to other relevant authorities, to clearing members and to customers of clearing members, to the owners of the covered clearing agency, and to the public.

* * * * *

(c) *Record of financial resources and annual audited financial statements.* (1) Each fiscal quarter (based on calculations made as of the last business day of the clearing agency's fiscal quarter), or at any time upon Commission request, a registered clearing agency that performs central counterparty services shall calculate and maintain a record, in accordance with § 240.17a–1 of this chapter, of the financial and qualifying liquid resources necessary to meet the requirements, as applicable, of paragraphs (b)(3), (e)(4), and (e)(7) of this section, and sufficient documentation to explain the methodology it uses to compute such financial resources or qualifying liquid resources requirement.

* * * * *

(d) Each registered clearing agency that is not a covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

* * * * *

(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

(1) Provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.

(2) Provide for governance arrangements that:

(i) Are clear and transparent;

(ii) Clearly prioritize the safety and efficiency of the covered clearing agency;

(iii) Support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q–1) applicable to clearing agencies, and the objectives of owners and participants;

(iv) Establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities;

(v) Specify clear and direct lines of responsibility; and

(vi) Consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.

(3) Maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which:

(i) Includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the board of directors annually;

(ii) Includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses;

(iii) Provides risk management and internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors;

(iv) Provides risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an independent audit committee of the board of directors, respectively; and

(v) Provides for an independent audit committee.

(4) Effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by:

(i) Maintaining sufficient financial resources to cover its credit exposure to

each participant fully with a high degree of confidence;

(ii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency providing central counterparty services that is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions;

(iii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency not subject to paragraph (e)(4)(ii) of this section, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions;

(iv) Including prefunded financial resources, exclusive of assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating the financial resources available to meet the standards under paragraphs (e)(4)(i) through (iii) of this section, as applicable;

(v) Maintaining the financial resources required under paragraphs (e)(4)(ii) and (iii) of this section, as applicable, in combined or separately maintained clearing or guaranty funds;

(vi) Testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements under paragraphs (e)(4)(i) through (iii) of this section, as applicable, by:

(A) Conducting stress testing of its total financial resources once each day using standard predetermined parameters and assumptions;

(B) Conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and considering modifications to ensure they are appropriate for determining the covered clearing agency's required level of default protection in light of current and evolving market conditions;

(C) Conducting a comprehensive analysis of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly when the products cleared or markets served display high volatility or become less liquid, or when the size or concentration of positions held by the covered clearing agency's participants increases significantly; and

(D) Reporting the results of its analyses under paragraphs (e)(4)(vi)(B) and (C) of this section to appropriate decision makers at the covered clearing agency, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its margin methodology, model parameters, models used to generate clearing or guaranty fund requirements, and any other relevant aspects of its credit risk management framework, in supporting compliance with the minimum financial resources requirements set forth in paragraphs (e)(4)(i) through (iii) of this section;

(vii) Performing a model validation for its credit risk models not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management framework established pursuant to paragraph (e)(3) of this section;

(viii) Addressing allocation of credit losses the covered clearing agency may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the covered clearing agency may borrow from liquidity providers; and

(ix) Describing the covered clearing agency's process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated.

(5) Limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its or its participants' credit exposure; and require a review of the sufficiency of its collateral haircuts and concentration limits to be performed not less than annually.

(6) Cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum:

(i) Considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market;

(ii) Marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances;

(iii) Calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default;

(iv) Uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable;

(v) Uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products;

(vi) Is monitored by management on an ongoing basis and is regularly reviewed, tested, and verified by:

(A) Conducting backtests of its margin model at least once each day using standard predetermined parameters and assumptions;

(B) Conducting a sensitivity analysis of its margin model and a review of its parameters and assumptions for backtesting on at least a monthly basis, and considering modifications to ensure the backtesting practices are appropriate for determining the adequacy of the covered clearing agency's margin resources;

(C) Conducting a sensitivity analysis of its margin model and a review of its parameters and assumptions for backtesting more frequently than monthly during periods of time when the products cleared or markets served display high volatility or become less liquid, or when the size or concentration of positions held by the covered clearing agency's participants increases or decreases significantly; and

(D) Reporting the results of its analyses under paragraphs (e)(6)(vi)(B) and (C) of this section to appropriate decision makers at the covered clearing agency, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management framework; and

(vii) Requires a model validation for the covered clearing agency's margin system and related models to be performed not less than annually, or more frequently as may be contemplated by the covered clearing agency's risk management framework established pursuant to paragraph (e)(3) of this section.

(7) Effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, doing the following:

(i) Maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions;

(ii) Holding qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under paragraph (e)(7)(i) of this section in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members;

(iii) Using the access to accounts and services at a Federal Reserve Bank, pursuant to Section 806(a) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5465(a)), or other relevant central bank, when available and where determined to be practical by the board of directors of the covered clearing agency, to enhance its management of liquidity risk;

(iv) Undertaking due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has:

(A) Sufficient information to understand and manage the liquidity provider's liquidity risks; and

(B) The capacity to perform as required under its commitments to provide liquidity to the covered clearing agency;

(v) Maintaining and testing with each liquidity provider, to the extent practicable, the covered clearing agency's procedures and operational capacity for accessing each type of relevant liquidity resource under paragraph (e)(7)(i) of this section at least annually;

(vi) Determining the amount and regularly testing the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement under paragraph (e)(7)(i) of this section by, at a minimum:

(A) Conducting stress testing of its liquidity resources at least once each day using standard and predetermined parameters and assumptions;

(B) Conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate for determining the clearing agency's identified liquidity needs and resources in light of current and evolving market conditions;

(C) Conducting a comprehensive analysis of the scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources more frequently than monthly when the products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by the clearing agency's participants increases significantly, or in other appropriate circumstances described in such policies and procedures; and

(D) Reporting the results of its analyses under paragraphs (e)(7)(vi)(B) and (C) of this section to appropriate decision makers at the covered clearing agency, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its liquidity risk management methodology, model parameters, and any other relevant aspects of its liquidity risk management framework;

(vii) Performing a model validation of its liquidity risk models not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management framework established pursuant to paragraph (e)(3) of this section;

(viii) Addressing foreseeable liquidity shortfalls that would not be covered by the covered clearing agency's liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations;

(ix) Describing the covered clearing agency's process to replenish any liquid resources that the clearing agency may employ during a stress event; and

(x) Undertaking an analysis at least once a year that evaluates the feasibility of maintaining sufficient liquid resources at a minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the two participant families that would potentially cause the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions if the covered clearing agency provides central counterparty services and is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile.

(8) Define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.

(9) Conduct its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency, and minimize and manage credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency.

(10) Establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries.

(11) When the covered clearing agency provides central securities depository services:

(i) Maintain securities in an immobilized or dematerialized form for their transfer by book entry, ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities;

(ii) Implement internal auditing and other controls to safeguard the rights of securities issuers and holders and prevent the unauthorized creation or deletion of securities, and conduct periodic and at least daily reconciliation of securities issues it maintains; and

(iii) Protect assets against custody risk through appropriate rules and procedures consistent with relevant laws, rules, and regulations in jurisdictions where it operates.

(12) Eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other, regardless of whether the covered clearing agency settles on a gross or net basis and when finality occurs if the covered clearing agency settles transactions that involve the settlement of two linked obligations.

(13) Ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity

demands and continue to meet its obligations by, at a minimum, requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.

(14) Enable, when the covered clearing agency provides central counterparty services for security-based swaps or engages in activities that the Commission has determined to have a more complex risk profile, the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that participant.

(15) Identify, monitor, and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by:

(i) Determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken;

(ii) Holding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under paragraph (e)(3)(ii) of this section, and which:

(A) Shall be in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in paragraph (b)(3) or paragraphs (e)(4)(i) through (iii) of this section, as applicable, and the liquidity risk standard in paragraphs (e)(7)(i) and (ii) of this section; and

(B) Shall be of high quality and sufficiently liquid to allow the covered clearing agency to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions; and

(iii) Maintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of this section.

(16) Safeguard the covered clearing agency's own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.

(17) Manage the covered clearing agency's operational risks by:

(i) Identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls;

(ii) Ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity; and

(iii) Establishing and maintaining a business continuity plan that addresses events posing a significant risk of disrupting operations.

(18) Establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.

(19) Identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities.

(20) Identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.

(21) Be efficient and effective in meeting the requirements of its participants and the markets it serves, and have the covered clearing agency's management regularly review the efficiency and effectiveness of its:

(i) Clearing and settlement arrangements;

(ii) Operating structure, including risk management policies, procedures, and systems;

(iii) Scope of products cleared or settled; and

(iv) Use of technology and communication procedures.

(22) Use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement.

(23) Provide for the following:

(i) Publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures;

(ii) Providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency;

(iii) Publicly disclosing relevant basic data on transaction volume and values;

(iv) A comprehensive public disclosure that describes its material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework, accurate in all material respects at the time of publication, that includes:

(A) *Executive summary.* An executive summary of the key points from paragraphs (e)(23)(iv)(B), (C), and (D) of this section;

(B) *Summary of material changes since the last update of the disclosure.* A summary of the material changes since the last update of paragraph (e)(23)(iv)(C) or (D) of this section;

(C) *General background on the covered clearing agency.* A description of:

(*1*) The covered clearing agency's function and the markets it serves;

(*2*) Basic data and performance statistics on the covered clearing agency's services and operations, such as basic volume and value statistics by product type, average aggregate intraday exposures to its participants, and statistics on the covered clearing agency's operational reliability; and

(*3*) The covered clearing agency's general organization, legal and regulatory framework, and system design and operations; and

(D) *Standard-by-standard summary narrative.* A comprehensive narrative disclosure for each applicable standard set forth in paragraphs (e)(1) through (23) of this section with sufficient detail and context to enable a reader to understand the covered clearing agency's approach to controlling the risks and addressing the requirements in each standard; and

(v) Updating the public disclosure under paragraph (e)(23)(iv) of this section every two years, or more frequently following changes to its system or the environment in which it operates to the extent necessary to ensure statements previously provided under paragraph (e)(23)(iv) of this section remain accurate in all material respects.

(f) For purposes of enforcing the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*), a designated clearing agency for which the Commission acts as supervisory agency shall be subject to, and the Commission shall have the authority under, the provisions of paragraphs (b) through (n) of Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if such designated clearing agency were an insured depository institution and the Commission were the appropriate Federal banking agency for such insured depository institution.

By the Commission.

Dated: September 28, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23891 Filed 10–12–16; 8:45 am]

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Part IV

The President

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Presidential Documents

Title 3—

The President

Proclamation 9517 of October 7, 2016

Fire Prevention Week, 2016

By the President of the United States of America

A Proclamation

More than 1 million fires occur each year in the United States. Throughout the past decade, the number of fires—and of resulting deaths and injuries—has gone down. But residential fires still damage homes across our country, causing a higher percentage of fire deaths, injuries, and economic loss than any other fires, and wildfires continue to devastate our forests and threaten nearby homes and businesses. During Fire Prevention Week, we strive to increase our preparedness for fires and commit to giving dedicated firefighters the support they need to keep us safe.

Every moment counts during a fire, and smoke alarms help save lives. However, many people do not know that their smoke alarms should be replaced every 10 years—after 10 years, they tend to become unreliable. I encourage everyone to check the manufacturing dates of their smoke alarms to see if they need replacing. Families and businesses should also develop and practice evacuation plans in case of emergencies and should prepare communication strategies in case of a fire. All Americans can learn more about steps they can take to prepare for fires by visiting www.Ready.gov.

In recent years, we have experienced some of the most severe wildfire seasons in American history, including roughly 50,000 wildfires and over 9 million acres burned last year alone. Climate change exacerbates wildfire risks through drier landscapes and higher temperatures—we must recognize the effects our changing climate has on fire risks and help fire professionals and community leaders take action to enhance community resilience against these risks. Last year, my Administration brought together fire chiefs from around our country to identify key lessons learned from fires at the wildland-urban interface and actions that can be taken to reduce the harm to people and property associated with wildfires in these areas, where fighting fires is especially complicated, expensive, and dangerous. We need to be smarter about where we build, and we must work to better understand how fires behave so our firefighters can work more safely and effectively—we owe these heroic professionals nothing less.

This week presents opportunities for businesses, families, and communities to learn about ways to protect themselves in case of fire and helps raise awareness of steps we can all take to prevent fires. During Fire Prevention Week, we also pause to honor our first responders and firefighters, including those who have sacrificed their own lives to save the lives of people they had never met. Let us salute them and pay tribute to all firefighters whose bravery, sense of duty, and love of country make our Nation a stronger, safer place.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 9 through October 15, 2016, as Fire Prevention Week. On Sunday, October 9, 2016, in accordance with Public Law 107–51, the flag of the United States will be flown at half-staff at all Federal office buildings in honor of the National Fallen Firefighters Memorial Service. I call on all Americans to participate

in this observance with appropriate programs and activities and by renewing their efforts to prevent fires and their tragic consequences.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–24992
Filed 10–12–16; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Proclamation 9518 of October 7, 2016

National School Lunch Week, 2016

By the President of the United States of America

A Proclamation

Seventy years ago, President Harry Truman signed the National School Lunch Act, declaring ''Nothing is more important in our national life than the welfare of our children, and proper nourishment comes first in attaining this welfare.'' This Act created the National School Lunch Program and provided lunch to 7 million children in its first year—today, more than 30 million children depend on it each day. As we observe the 70th anniversary of this program, we recommit to ensuring access to proper nutrition throughout the school day for all our young people so that they may pursue their education and chase their dreams.

Since the beginning of my Administration, I have worked to build on the legacy of the National School Lunch Program. In 2010, the Congress passed and I signed into law the Healthy, Hunger-Free Kids Act, which increased the number of students who could get subsidized or free school meals and improved the quality of school meals. For children from low-income households, meals provided by the National School Lunch Program and the School Breakfast Program may be their only reliable source of nutrition throughout the day. We are working to increase access for more children, including by using Medicaid data to automatically connect eligible students in need to free or reduced-priced meals.

During the school year, nearly 22 million children receive free and reduced-price school meals. When school is out for the summer, well over 2 million children rely on the Summer Food Service Program for nourishment. However, too many kids still lack access to adequate nutrition during the summer months, which is why I proposed investing $12 billion in my latest budget to provide supplemental summer food benefits to children who receive free and subsidized school meals during the academic year.

We must also work to give children greater access to nutritious foods and empower them to make healthy choices. Too many young people are obese or overweight and remain at risk for health problems like diabetes or heart disease later in life. First Lady Michelle Obama has championed efforts to build healthy futures for all children, particularly through the *Let's Move!* initiative, which has worked to provide healthier meals in our schools and ensure every family has access to healthy, affordable food. The Department of Agriculture updated school nutrition standards to make sure all school meals and snacks meet science-based nutrition criteria, and almost all schools participating in the National School Lunch Program are meeting these standards.

In order for our children to join the most prepared and educated workforce in the world, we must remember the connection between what our kids eat and how well they perform in school. During National School Lunch Week, let us reaffirm our dedication to helping America's daughters and sons succeed by guaranteeing they have access to the healthy meals they need. Let us express our gratitude for the school nutrition professionals, educators, and administrators who are helping deliver the promise of a bright future to schoolchildren across America each day.

The Congress, by joint resolution of October 9, 1962 (Public Law 87–780), as amended, has designated the week beginning on the second Sunday in October each year as ''National School Lunch Week'' and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim October 9 through October 15, 2016, as National School Lunch Week. I call upon all Americans to join the dedicated individuals who administer the National School Lunch Program in appropriate activities that support the health and well-being of our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–24994
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Presidential Documents

Proclamation 9519 of October 7, 2016

Leif Erikson Day, 2016

By the President of the United States of America

A Proclamation

More than 1,000 years ago, an intrepid Scandinavian explorer, Leif Erikson, embarked on a voyage that landed him on the North American coast. A son of Iceland and grandson of Norway, Erikson and his crew are believed to be the first Europeans to reach the shores of our continent, founding the Vinland settlement in modern-day Canada. Today, we recall Leif Erikson's historic journey as we seek to carry forward the bold spirit of exploration that has inspired Nordic Americans for generations.

Eight centuries after Leif Erikson's trip, six families of Norwegians boarded a ship called *Restauration* bound for New York City. Following in Erikson's footsteps, these individuals sought the promise of freedom and opportunity America offered and became the first group of organized American immigrants from Norway. Millions of Americans proudly trace their ancestry to Nordic countries, raised by parents and grandparents who crossed oceans to carve out new lives for their families and help steer the course of our country. The United States and our Nordic partners are united by ties of family and friendship, history and heritage. Earlier this year, I was proud to welcome Nordic leaders to the White House. This visit illustrated many of the values and interests we share—including increasing opportunity for all and recognizing the inherent dignity of every human being.

Nordic countries remain some of our most reliable and effective partners, steadfastly helping us meet the shared challenges of our time. We remain grateful for their friendship, and for the ways the Nordic people have influenced our country and enhanced the American melting pot. On Leif Erikson Day, as we express our appreciation for the myriad contributions of Nordic Americans, let us remember the discovery that set this profound history in motion.

To honor Leif Erikson and celebrate our Nordic-American heritage, the Congress, by joint resolution (Public Law 88–566) approved on September 2, 1964, has authorized the President of the United States to proclaim October 9 of each year as ''Leif Erikson Day.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim October 9, 2016, as Leif Erikson Day. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs to honor our rich Nordic-American heritage.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

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Presidential Documents

Proclamation 9520 of October 7, 2016

Columbus Day, 2016

By the President of the United States of America

A Proclamation

In October of 1492, Christopher Columbus completed the first of his expeditions that would land him on the shores of North America. Sponsored by Isabella I and Ferdinand II, Columbus embarked on a 10-week voyage he had hoped would lead to Asia. But when his ships instead landed in the Bahamas, a new story began to unfold. The spirit of exploration that Columbus embodied was sustained by all who would follow him westward, driving a desire to continue expanding our understanding of the world.

Though Columbus departed from the coast of Spain, his roots traced back to his birthplace of Genoa, Italy. Blazing a trail for generations of Italian explorers and Italian Americans to eventually seek the promise of the New World, his voyage churned the gears of history. The bonds between Italy and the United States could not be closer than they are today—a reflection of the extraordinary contributions made by both our peoples in our common efforts to shape a better future. Across our Nation, Italian Americans continue to enrich our country's traditions and culture.

As we mark this rich history, we must also acknowledge the pain and suffering reflected in the stories of Native Americans who had long resided on this land prior to the arrival of European newcomers. The past we share is marked by too many broken promises, as well as violence, deprivation, and disease. It is a history that we must recognize as we seek to build a brighter future—side by side and with cooperation and mutual respect. We have made great progress together in recent years, and we will keep striving to maintain strong nation-to-nation relationships, strengthen tribal sovereignty, and help all our communities thrive.

More than five centuries ago, one journey changed the trajectory of our world—and today we recognize the spirit that Christopher Columbus's legacy inspired. As we reflect on the adventurers throughout history who charted new courses and sought new heights, let us remember the communities who suffered, and let us pay tribute to our heritage and embrace the multiculturalism that defines the American experience.

In commemoration of Christopher Columbus's historic voyage 524 years ago, the Congress, by joint resolution of April 30, 1934, and modified in 1968 (36 U.S.C. 107), as amended, has requested the President proclaim the second Monday of October of each year as ''Columbus Day.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim October 10, 2016, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of our diverse history and all who have contributed to shaping this Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

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Presidential Documents

Proclamation 9521 of October 7, 2016

General Pulaski Memorial Day, 2016

By the President of the United States of America

A Proclamation

Over two centuries ago, Polish immigrant Casimir Pulaski crossed an ocean to take up the cause of defending a young nation. Rising quickly to the rank of Brigadier General in the Continental Army, he reformed our cavalry, saved the life of General George Washington, and helped secure our independence. Today, we celebrate the legacy of liberty he forged and reflect on the many ways Polish-American voices continue to shape the unending story of our Nation.

Spending his formative years in Poland laboring for his home country's independence, General Pulaski came to America with both an expertise in combat and a passion for liberty that made him invaluable to our new Nation's fight for freedom. Leading a legion of men on horseback and working alongside General Washington, General Pulaski achieved victory after victory. But he would never see the results of his valiant efforts fully realized—he succumbed to battle injuries on October 11, 1779, giving his final full measure of devotion in defense of the ideals we cherish.

More than 200 years later, Polish Americans across our country honor the spirit of General Pulaski through their many contributions to our Nation and through living the values that unite us all. The proud members of the Polish-American community strengthen the rich heritage of our country—many serve in our Armed Forces, protecting the very freedoms General Pulaski helped secure centuries before—and they reflect the strong friendship that endures today between the United States and Poland.

On General Pulaski Memorial Day, we commemorate one of our Nation's earliest embodiments of the belief that no matter who you are or where you come from, those who love this country can change it for the better. In honor of General Pulaski's sacrifice and the important role Polish Americans play in our country, let us rededicate ourselves to defending our founding ideal of liberty for all.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 11, 2016, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to Casimir Pulaski and honoring all those who defend the freedom of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

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Presidential Documents

Proclamation 9522 of October 7, 2016

International Day of the Girl, 2016

By the President of the United States of America

A Proclamation

No matter where she lives, every girl on this planet deserves the chance to learn and grow, to develop her mind and her talents, and to live a life of her own choosing. Although we have made life significantly better for our daughters than it was for our mothers and grandmothers, in too many parts of the world, girls are still undervalued, disrespected, abused, and prevented from contributing to society. On International Day of the Girl, we recognize our obligation to lift up women and girls at home and abroad and to build a world where all girls feel safe and empowered in their classrooms, their communities, and their homes.

My Administration is committed to combating gender disparities, and through the White House Council on Women and Girls, we have made it a priority to consider the needs of women and girls in our policies, laws, and programs. Today, more American women have the freedom to make their own choices about their lives—about their bodies, their education, their career. The Affordable Care Act has ensured that more girls have access to quality, affordable health care and that no health insurer can charge them more simply because of their gender. By encouraging the media to depict more examples of women in science, technology, engineering, and math (STEM) fields—and by working to expand access to STEM classes and careers, particularly computer science—we are striving to address inequalities in education. We will continue to pursue policies that advance gender equality here at home, from equal pay for equal work to protecting reproductive rights, because while some girls have never had more opportunities, there are still many who remain in the toughest of circumstances.

Under the leadership of Vice President Joe Biden, we are working to put an end to violence against women, and we have launched a movement to fight sexual assault and support survivors. Through the White House Task Force to Protect Students from Sexual Assault and the ''It's On Us'' campaign, we are shining a light on the unconscionable rates of sexual assault against teens and young adults in primary and secondary schools and on college campuses. My Administration recently announced new guidance and resources to help district administrators and educators prevent and appropriately deal with sexual assault in K–12 settings. We have also provided guidance to educators on ways to address harassment and discrimination of students in school settings, including transgender girls and women—who too often face bullying and abuse that harm their education. The Department of Justice also released guidance to identify and prevent gender bias in law enforcement responses to sexual assault and domestic violence cases. And because 84 percent of American Indian and Alaska Native women and girls will experience some form of violence in their lifetimes, we have protected the ability of tribes to prosecute non-Native perpetrators of domestic violence in Indian Country through provisions included in the 2013 reauthorization of the Violence Against Women Act.

As we work to expand opportunities here in the United States, we must also look abroad and acknowledge that any country that oppresses half of its population—that prevents women and girls from going to school

or work or refuses to give them control over their bodies or safety from gender-motivated abuse—is not a society that can thrive. The ideologies that harm girls and prevent them from fulfilling their potential are the same ideologies that have led countries to instability, violence, and terrorism. That is why earlier this year, we launched the *U.S. Global Strategy to Empower Adolescent Girls*—a strategy aimed at bringing Federal agencies together to comprehensively improve the lives of girls around the world, safeguard their rights, and encourage their full social, political, and economic participation. To specifically focus on the challenge of adolescent girls' education, First Lady Michelle Obama and I launched the *Let Girls Learn* initiative, through which we are working with companies, organizations, and foreign governments to help give adolescent girls around the world the chance to go to school—because a world in which all girls have access to an education is a safer, fairer, and more stable place. The initiative includes more than a billion dollars for funding new and ongoing programming in more than 50 countries to help adolescent girls attend and stay in school. And the White House will soon host the first meeting of the North American Working Group on Violence against Indigenous Women and Girls to champion regional coordination on the rights of women and girls from indigenous communities across North America.

Around the world—from Africa to Southeast Asia to Latin America—we are striving to improve girls' welfare, build their skills, and promote their participation as the next generation of leaders. We are working to prevent and respond to violence against women and girls in fragile settings as well as support refugees and displaced persons around the world. We are undertaking targeted efforts to address child, early, and forced marriage, and we are investing in new programs, including survivor-led programs, to end female genital mutilation and cutting in seven countries across Southeast Asia and West Africa. In sub-Saharan Africa, we are helping adolescent girls pay for and attend school, while ensuring they learn about HIV and violence prevention. We have sponsored ''Women in Science'' camps in Peru and Rwanda to give girls abroad the opportunity to learn how to use technology to improve their communities. We are also working with Pakistan to advance women's economic participation and entrepreneurship and launch the country's first ''Take Your Daughter to Work Day.'' And we remain committed to ending human trafficking and have taken unprecedented steps to provide comprehensive services to victims, bring traffickers to justice, apply new technologies to combat modern slavery, and provide training and promote awareness at home and abroad.

This summer, 5,000 leaders from around the world gathered at the first ever United State of Women Summit to highlight the work we have done and to build an agenda for the future. But we know there is still more to do, and I have made advancing gender equality a foreign policy priority to ensure we can continue removing barriers that prevent women from reaching their full potential. More than our policies, we must commit to changing the culture that raises our daughters to be demure or criticizes them for speaking out—and to changing the attitude that permits the routine harassment of women and girls, whether walking down the street or going online. We are working with communities and businesses that are rethinking workplace policies, funding women entrepreneurs, expanding female leadership, and creating more opportunities for women and girls who too often face disproportionate challenges—including women and girls of color, women and girls with disabilities, and lesbian, bisexual, and transgender women and girls—because everyone has a role to play and everybody deserves the chance to pursue their dreams.

This is the future we are forging: Where women and girls, no matter what they look like or where they are from, can live free from the fear of violence. A future where all girls know they can hold any job, run any company, and compete in any field. Today, we recommit ourselves to the belief that when everyone has the opportunity to go to school, explore their passions, and achieve their dreams, our communities are stronger, more resilient,

and better positioned for peace and prosperity. Let us keep working to build a world that is more just and free—because nothing should stand in the way of strong girls with bold dreams.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 11, 2016, as International Day of the Girl. I call upon the people of the United States to observe this day with programs, ceremonies, and activities that advance equality and opportunity for girls everywhere.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

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