CFA Institute

560 Ray C. Hunt Drive
Charlottesville, VA
22903-2981 USA

+1 (434) 951 5499 tel
+1 (434) 951 5262 fax
info@cfainstitute.org
www.cfainstitute.org

27 May 2014

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Standards for Covered Clearing Agencies (File No. S7-03-14)

Dear Ms. Murphy:

CFA Institute[1] appreciates the opportunity to comment on proposed rule amendments by the Securities and Exchange Commission (Commission) under its proposal, Standards for Covered Clearing Agencies (the "Standards"). The Standards would establish enhanced transparency, risk management and governance requirements for certain covered clearing agencies.

CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

Executive Summary

Management of Financial and Legal Risks. We appreciate and support the added attention to managing the risks of covered clearing agencies, both financial and legal, through the comprehensive approach being proposed. We particularly support the requirement that agencies have in place recovery, resolution and wind-down plans in order to contain wide-spread contagion in the case of severe losses that would necessitate such action.

We also believe that the proposed requirement for determining the amount for prefunded guaranty funds is appropriate as part of establishing a financial risk management plan. Similarly, we support the creations of a risk-based margin system to cover credit exposures. We believe a requirement to maintain sufficient liquidity is essential to minimizing systemic risks.

Management of General Business Risks. We generally support the proposed undertakings by covered clearing agencies aimed at mitigating potential systemic risk. Requiring the agencies to identify and monitor general business risks, manage liquid assets accordingly and maintaining a

[1] CFA Institute is a global, not-for-profit professional association of more than 122,600 investment analysts, advisers, portfolio managers, and other investment professionals in 144 countries, of whom nearly 114,800 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 143 member societies in 68 countries and territories.

viable plan for raising additional equity when needed all contribute to avoiding disruptions in their operations, and the concomitant effect on the broader market.

Concerns. In general, we support the Standards as proposed by the Commission. The Standards would ensure greater prudence, transparency and risk management for certain clearing agencies. However, we would suggest that these provisions should apply to all clearing agencies to reduce the risk of failure and the problems such a failure would cause for investors.

As regulations, including these "Standards," are proposed to implement the provisions of the Dodd-Frank Act ("DFA") relating to central clearing of previously over-the-counter ("OTC") swaps and derivatives, the more it becomes clear to CFA Institute and others that doing so carries significant risks. The unique characteristics of even "plain-vanilla" bilateral interest rate swap agreements — the maturities of the debts on either side of the agreement, the rate and types of interest rates swapped, the credit ratings of each counterparty, among other concerns — together with the collection and maintenance of collateral for two distinct parties, the difficulties of finding parties to replace one or both counterparties and pricing one-of-a-kind instruments are some of the difficulties that central counterparties will face when clearing OTC instruments.

Furthermore, the market for OTC instruments significantly dwarfs the size of the exchange-traded marketplace. In its "Quarterly Report on Bank Trading and Derivatives Activities"[2] for the fourth quarter of 2013, the Office of the Comptroller reported that the notional amount for futures and forward contracts – principally the volume of exchange-traded contracts that the biggest CCAs oversee today — was $42.1 trillion. While large, that market accounts for just under 18% of the $237 trillion in notional amount for all swaps and derivative instruments.

We are concerned about the potential for disruption and systemic risk that the combination of these two markets may have on CCAs. Not only would these institutions have to assume responsibility for non-standardized instruments that may perform in a manner contrary to what is expected in times of stress, but the notional amount for these instruments is more than five times greater than what they've been responsible for managing to date. A mistake in failing to adequately margin and collateralize such instruments may cause significant risk for the clearinghouses. A mistake in the opposite direction to overcompensate with margin and collateral that is greater than needed could cause end-users in the real economy to forego hedging commodity and financial risks because the costs are too onerous.

It is for these reasons that we urge caution among regulators about the manner in which they seek to regulate these enterprises. We also urge the Commission, together with the other agencies on the Financial Security Oversight Commission ("FSOC") to reconsider whether it is prudent from a systemic risk perspective to require that all OTC contracts, whether standardized or not, to clear through CCAs. Given the size of CCAs and their importance to the financial system, we are concerned that the difficulties and risks involved in pricing and margining for such one-of-a-kind instruments outweigh the potential benefits they might produce.

[2] http://www.occ.treas.gov/topics/capital-markets/financial-markets/trading/derivatives/dq413.pdf. See Graph 2 on page 17 of the report for a delineation of the swaps and derivatives markets by type.

Discussion

In 2012, the Commission adopted Rule 17Ad-22 under the Securities Exchange Act of 1934 that strengthened the standards for registered clearing agencies and took into account the existing practices and international standards. Since publication in 2012 of the Principles for the Financial Market Infrastructures by the Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions (CPSS-IOSCO [3]that replaced prior standards for clearing agencies, regulators have sought to update their regulations accordingly. This proposal reflects the Commission's latest efforts to work within this framework aimed at a national system for clearance and settlement.

Existing Rule 17Ad-22 provides standards for risk management and business operations of registered central clearing agencies (CAs). Through this proposal, the Commission would add new requirements for "covered" clearing agencies (CCAs), provide new procedures for the Commission to make determinations regarding CCAs and amend the existing rules applicable to CAs. The SEC proposes to keep in place provisions of the current Rule 17Ad-22(d) that apply to clearing agencies and that already provide for "minimum" requirements for the operation of clearing agencies registered with the Commission.

Under this proposal, new regulations would target clearing agencies that potentially pose a greater risk to the stability of the financial system than are addressed by current rules. We applaud the special attention given to these entities given the significant increase in their mandate under the DFA, and the potential systemic problems these institutions are capable of producing if they misjudge their pricing or performance. The new rules would address requirements for registered clearing agencies that are thought to be risker—either because of their size, the types of operations in which they engage, or the importance of the markets they cover. These entities are deemed to be "systemically important because of their significance to the U.S. financial system and the risk that the failure of, or a disruption to, their functioning would increase the risk of significant liquidity or credit problems spreading among financial institutions thereby threatening the stability of the U.S. financial system."

An important component of the new requirements is that covered clearing agencies must establish, implement, maintain and enforce written policies and procedures to implement the new rules. This approach is intended to allow the clearing agencies the flexibility to tailor their policies in light of their market experience and business, while implementing the actual rule requirements. A number of the actual rule requirements require periodic review—daily, monthly, or annually—in keeping with the activity. In addition, clearing agencies are expected to review their overall policies and procedures on an ongoing basis and to make appropriate updates in light of changing circumstances, such as technology, legal requirements and customer needs.

[3] http://www.bis.org/publ/cpss101a.pdf

A. Covered Clearing Agencies

The proposal would establish new oversight requirements for CCAs that would apply to risk management, business operations, governance procedures and disclosures. To be "covered" for purposes of the new requirements, a clearing agency would have to be (1) designated as a systemically risky financial institution (SIFI) by the FSOC and under the oversight jurisdiction of the Commission; (2) provide central counterparty services for security-based swaps or involved in other complex, high-risk activities and not supervised by the Commodities and Futures Trading Commission (CFTC); or otherwise be determined by the Commission to be a covered clearing agency, in accordance with the framework being proposed.

In order to implement this new oversight regime, this proposal would create a second tier of provisions under existing Rule 17Ad-22 that would apply only to the "covered" agencies, which would be designated Rule 17Ad-22(e) This new rule would require CCAs to establish and implement policies and procedures focused on risk management and operations, including:

- General organization;
- Financial risk management;
- Settlement;
- Central securities depositories and settlement systems;
- Default management;
- Risk management of business and operational risks;
- Access;
- Efficiency; and
- Transparency.

In general, these focus areas already apply to the Commission's oversight of CAs, although enhancements would be made under the proposed rule for covered entities. But new Rule 17Ad-22(e) also would impose a number of important new requirements on CCAs in the following three broad areas by requiring the CCA to have policies and procedures relating to:

(1) Governance and Risk Management
- The qualifications of board members and senior management; and
- Ensuring adequate independence of the internal audit function from management, including policies and procedures for creating an independent audit committee.

(2) Financial Risk Management
- Liquidity risk, particularly relating to holding "qualifying liquid resources" sufficient to withstand certain defaults;
- Credit risk, including daily stress-testing and periodic validation of credit risk models;
- Margin, including marking positions to market and model validation; and
- Collateral, including the setting of haircuts and concentration limits.

(3) General Business Risk

- The holding of liquid net assets funded by equity that would allow the CCA to continue operations during certain events, as well as for establishing a viable means for raising additional equity, should its equity fall below the amount determined to be required.

In general, we strongly support adoption and implementation of each of these new requirements. We see them as prudent steps toward ensuring CCAs are developing and implementing sound techniques to manage the risks that financial firms and end-users wish to hedge.

At the same time, however, we are concerned that the types of instruments covered by these new rules will be difficult for CCAs to manage. The unique structures, terms, conditions and risks of these instruments add a level of complexity to the clearing process that CCAs have never had to manage previously.

B. Commission Determinations

In addition to establishing new requirements for the operations of the CCAs, the Commission's proposal also would create procedures by which the Commission could make determinations in the future about whether (1) a CA should be considered a CCA; (2) a CCA meets the definition of being "systemically important in multiple jurisdictions;" and (3) a CA providing central counterparty services is engaging in activities that are of a more complex risk profile.

We support these proposed requirements as steps needed to ensure that CAs engaged in activities that represent an increase in risk and complexity are given more thorough oversight and monitoring to prevent adverse consequences for member firms, investors and end-users.

C. Discussion on Specific Rule Proposals

Through introduction of Rule 17Ad-22(e) and its various subparts, the Commission proposes that covered clearing agencies develop and adopt policies and procedures to implement 22 new rules. We comment below on certain of those rules that especially raise issues of investor protection.

Rule 17Ad-22(e)(1)—Legal Risk

We agree with the Commission that legal uncertainties may increase risks. Uncertainties over what party is financially responsible for various obligations arising from trading activities, particularly those occurring cross-border could impair the ability of CCAs to appropriately manage their risks. We therefore support the proposal that each CCA needs policies and procedures to provide for a "well-founded, clear, transparent, and enforceable basis for each aspect of its activities in all relevant jurisdictions." Given that registered clearing agencies are

generally already required to provide such policies and procedures, we understand that CCAs will have to make only limited changes to update their policies.

Rule 17Ad-22(e)(2)—Governance

We strongly support the proposed requirements that CCAs adopt policies and procedures for clear and transparent governance arrangements and that prioritize safety and efficiency. We agree that decisions made by CCAs can have wide impact on multiple financial markets and jurisdictions and that governance measures should support the objectives of owners and participants. Along these lines, we particularly support proposed Rule Ad-22(e)(2)(iv) that would require governance mechanisms to ensure that members of the board of directors and senior management have the skills and experience to perform their duties and responsibilities. Given the systemic importance of CCAs, it is imperative that those at the helm are capable of performing the requisite decision-making, assessing risks and achieving intended outcomes.

We also support the proposal to consider the public interest with regards to certain matters. For example, we agree that senior firm officials should consider the effects on the broader market with regard to competitive matters such as pricing, or, on the other hand, consider the prudence of meeting a competitor's aggressive pricing moves. In such cases, a board's decisions about how their firm acts or reacts to competition in the marketplace could undermine the safety and soundness not only of their own firms, but also lure the rest of the industry into a dangerous "race to the bottom" in terms of risk management.

This approach raises the obligations of those responsible for corporate governance measures to consider not only the risks and operations of the clearing agencies themselves, but also the effect on the entire financial system as part of the overall "public interest" duty. This mandate also recognizes the pivotal roles CCAs play in terms of managing risk for not only stakeholders but also for the common good of the financial system.

Rule 17Ad-22(e)(3)—Framework for the Comprehensive Management of Risks

This proposed rule would build on existing requirements for clearing agencies under Rule 17Ad-22(b) and (d) in relation to maintaining risk management practices by adding three new subparts. These subparts are aimed at requiring CCAs to take a more comprehensive approach with respect to the "examination of risks, the assessment of their probability and impact, and the identification of linkages to other entities that, in turn, pose risks to the covered clearing agency." The proposal encourages CCAs to design appropriate policies and procedures "holistically" and with the intent that they will work consistently and effectively with each other to mitigate risk.

Specifically, CCAs would have to ensure that their boards of directors periodically review and annually approve policies and procedures that would identify, measure, monitor and manage their risks. They also would need policies and procedures for establishing plans for the recovery

or orderly wind-down in the event of credit losses, liquidity shortfalls or other losses. Finally, they would have to adopt and implement policies and procedures that provide risk management and internal audit personnel with "sufficient authority, resources, independence from management, and access to the board of directors."

We support these proposed requirements as prudent requirements for all CAs and CCAs. In particular, given the systemic implications of a failure of a CCA, we believe a resolution and wind-down plan is essential to containing wide-spread contagion. We also appreciate the attention to empowering those responsible for conducting internal audits with the independence they need to make independent assessments. This is integral to establishing and maintaining good corporate practices and ensuring the integrity of the audit.

Ultimately, though, we are concerned that these requirements may prove insufficient in preventing systemic failure of the CCA system during a financial panic. For example, new financial instruments with unique features may not perform as expected in times of market stress, and could put a CCA and its member firms in jeopardy of failure.

Rules 17Ad-22 (e)(4)-7—Financial Risk Management

This group of proposed rules seeks to create a framework to enhance safeguards for CCAs that exceed those already applicable to CAs in terms of identifying, monitoring and preparing for unexpected developments that could threaten the financial stability of CCAs and their ability to honor financial commitments. In general, we find these proposals to be reasonable and well-founded.

CCAs' ability to assess clearing member firms to build guaranty funds that are intended to support the continuation of clearing operations should a member firm fail or default on its obligations is vital to the continuity of business. CCAs also have the authority to make additional assessments on member firms should it exhaust all of its guaranty funds following the default of another member, or experience some other form of market turmoil.

The concern raised by some[4] is that clearing members will have more difficulty meeting their obligations if CCAs wait to make such assessments during times of market stress. In part, this is because member firms, too, may be under financial distress in such conditions. At the very least, it may take member firms an extended period of time to fulfill their obligations, thus subjecting a CCA to additional liquidity stress. We share these concerns and believe it is prudent to ensure that such guaranty funds are appropriately funded in advance of distressed markets.

Proposed Rule 17Ad-22(e)(4)(1) would require a "high degree of confidence" on the part of CCAs to cover their credit exposures to each participant, meaning that they would need to develop and use statistical methods in determining the amount of financial resources that would

[4] See http://www.blackrock.com/corporate/en-us/literature/whitepaper/viewpoint-ccp-tbtf-april-2014.pdf.

be required. Under the rule, CCAs providing central counterparty services that are either "systemically important in multiple jurisdictions or a complex risk profile clearing agency" would have to maintain a level of financial resources that would cover the default of the two participant families that could cause the greatest aggregate credit exposure ("cover two").

In order to meet this requirement, such CCAs would have to implement policies and procedures for determining the amount of their prefunded financial resources in order to meet financial obligations in stressed markets. Noting that certain contributions would not count, the proposal explains that "previously paid-in participant contributions" into a CCA default fund, previously-funded margin and borrowed funds already drawn down generally could be used for this purpose. We agree that while prefunding is not contemplated for even CAs under existing rules, this requirement is appropriate for CCAs that have greater default obligations given their size and importance.

Calibration in these matters will be key. If CCAs are too cautious in their risk management and increase their margin and collateralization requirements, they could undermine the willingness of end-users to manage their risks through such derivative instruments, with uncertain outcomes for the real economy. If they are too aggressive, on the other hand, a lack of appropriate risk management could lead to quick depletion of default funds, capital reserves and liquidity, thus putting more stress not only on the CCA but also its member firms and competitors as all seek to secure their own capital positions. Given the unique characteristics of non-standard contracts, we are concerned that CCAs may have a difficult time meeting their obligations in times of stress. And given the unique position of CCAs within the financial system and their potential size if they ultimately clear OTC instruments, their difficulties could transmit negative effects throughout the financial system.

We also generally agree with the proposed use of stress-testing and model validations in order to assess the level of financial resources that CCAs should maintain in order to meet their cover obligations. In particular, we appreciate that while the proposal sets a minimum timeframe for conducting these tests, it also recognizes that changing market conditions may require more frequent action by the CCAs. We believe this achieves the appropriate balance of setting minimum standards while imposing upon CCAs the responsibility to continually assess market conditions.

Proposed Rule Ad-22(e)(5) would limit that type of collateral CCAs can accept to assets with low credit, liquidity and market risks in order to manage credit exposures. It also requires the CCA to conduct at least annual reviews of their concentration and collateral haircut limits. We agree with this approach, as well.

Proposed Rule 17Ad-22(e)(6) would require CCAs to establish and monitor a risk-based margin system to cover credit exposures with more specific requirements than is currently required of CAs, including requirements for the active management of such a system that marks each

participant's outstanding positions to current market prices, the use of reliable sources and sound valuation models, use of appropriate methods for measuring credit risk exposures, back-testing and sensitivity analyses, and annual model validations to evaluate the use of margin models and assumptions by unbiased parties. We believe the proposed approach is reasonable.

Proposed Rule 17Ad-22(e)(7) would require each CCA to "measure, monitor and manage the liquidity risk that arises in or is borne by it" in accordance with certain criteria, including the maintenance of sufficient qualifying resources and annual testing of a liquidity provider's procedures and operational capacity. Under this proposed rule, CCAs also would be required to consider using accounts at a Federal Reserve Bank or other central bank in order to handle liquidity risk, when the board determines it to be practical. While encouraged to consider using central banks, CCAs could decide to use commercial banks for their services.

Finally, this rule also would require due diligence on the part of each CCA in confirming that it has a reasonable basis to believe that its liquidity provider can adequately understand and manage its liquidity risk, as well as meet its liquidity commitments. To satisfy its due diligence obligations under this rule, each CCA would have to conduct its own investigation instead of relying on the liquidity provider's representations. In addition, the CCA would have to annually test the liquidity provider's procedures and operational capacity to deliver the liquidity resource as contemplated by the funding arrangement. The CCA also must conduct daily stress tests of its liquidity resources; monthly analyze and consider modifying the stress test scenarios, models and underlying parameters and assumptions used in determining liquidity needs and resources; and conduct a comprehensive analysis when products or markets become volatile or less liquid or the size and concentration of positions held by participants significantly increase.

Regardless of our concerns about the difficulties of central clearing one-of-a-kind derivative instruments, we believe the various requirements of this proposed rule are prudent and appropriate in light of the need of CCAs to have adequate liquidity in order to minimize systemic risks. By requiring ongoing testing and monitoring of underlying assumptions and provider capacity, CCAs should become aware of potential problems in time to adjust operations without significant disruptions to the marketplace.

Rule 17Ad-22(e)(15)—General Business Risk

We believe that this proposed rule would require several undertakings by CCAs that are important for mitigating their potential systemic effect. Specifically, this rule would require CCAs to identify, monitor and manage what they define as general business risks and then hold and manage liquid assets in a way that would allow a recovery or orderly wind-down, if necessary. We support the components of this proposed rule as an effective way to manage the potential contagion effect of the failure of a CCA on the U.S. financial system, in light of their size and importance.

Under the proposed rule, a CCA would be required to establish policies and procedures for determining the amount of liquid assets and the length of time needed for either a recovery or orderly wind-down. As a requirement, the CCA would have to use liquid assets that are funded by equity that would allow it to continue business operations if it were to suffer general losses. The magnitude of liquid net assets funded by equity would have to be the greater of six months of the CCA's operating expenses or another amount that its board of directors decides is sufficient, and could be met by having an adequate level of cash or cash equivalents. These liquid net assets would be in addition to those needed to manage participant default, credit losses, or liquidity shortfalls. In addition, the Commission notes that this requirement regarding liquid assets is needed to allow a CCA to continue its operations while winding down or in recovery.

To determine the appropriate amount that would meet the requirement, a CCA could project its operating expenses over a certain period of time, as well as consider projected changes in the business environment over that time period. The proposal also notes the CCA should consider the following four factors when making those projections:

- Expectations regarding business expansions including the offering of new services or clearing and settling new types of instruments;
- Expectations regarding business contractions due to reduction in or loss of certain types of clearing and settlement activities or clearing members;
- Potential risks of large one-time or non-recurring losses; and
- The degree to which expected future losses may be covered by insurance or an indemnity provided by unaffiliated third-parties.

Recognizing the need to avoid disruptions in the sound and efficient operations of CCAs, the proposal would require policies and procedures for maintaining a viable plan (updated annually) for raising additional equity when a CCA's equity falls below or close to the amount required by the rule proposal. While we support many of the requirements proposed under this section as needed for a CCA's business plan, we believe that capital-raising should occur prior to a CCA approaching the required equity thresholds contemplated by this rule to prevent the entity from finding itself unable to raise the needed equity due to market conditions.

We are nevertheless concerned that proposed policies and procedures may be inadequate for a CCA that is in the business of clearing large quantities of bespoke swap and derivative instruments. CCAs may have difficulty planning for how to clear and settle new derivative products or services, and how such unique instruments will function in times of market stress. Consequently, we urge the Commission and other members of FSOC to reassess whether clearing of bespoke instruments is appropriate given the potential problems predicting how these instruments will perform in times of stress.

Rule 17Ad-22(e)(17)—Operational Risk Management

Similar to what already is required under current Rule 17Ad-22(d)(4), the proposed rule would require policies and procedures by CCAs aimed at managing their operational risks. These would include risks related to faulty internal controls, human error, misconduct, information system disruptions, and other problems due to external causes, including natural disasters. The proposed rule would require CCAs to have the policies and procedures in place to identify the causes of the problems, ways to mitigate the effects, and ensure a high degree of security and operational reliability. The rule also would require CCAs to have the requisite policies and procedures for implementing business continuity plans in light of the events that could significantly disrupt their smooth and efficient operations.

We believe that most, if not all, businesses of this size and significance must commit to, and undertake, plans to manage operations in the case of disruptions, including adoption of formal business continuity plans. Anything short of this risks major repercussions and the loss of investor trust.

Rule 17Ad-22(e)(18)—Access and Participation Requirements

We support the proposed "fair and open access" requirements under this rule under which CCAs would publicly disclose their criteria for participation by direct participants and, where appropriate, indirect participants and financial market utilities. We agree that requiring all CCA members to have sufficient minimum financial resources and other capacities to meet their obligations provides an important investor protection by seeking a stable pool of participants that can counterbalance a member's default or other effects from a stressed market. We also appreciate the affirmative and public declaration criteria for participating and that the criteria would be not only objective, but also risk-based.

Rule 17Ad-22(e)(19)—Tiered Participation Agreements

Not addressed under current Rule 17Ad-22 for registered clearing agencies, this proposed rule would require CCAs to have policies and procedures addressing the credit, liquidity and operational risks for CCAs arising from firms that are not direct CCA participants but rely on services provided by direct participants to access payment, clearing or settlement facilities through "tiered participation" agreements. These tiered arrangements expose CCAs to added risks through the operational, financial and other interconnectedness of the direct and indirect participants and could undermine a CCA's abilities to adequately perform its operations for both indirect and direct participants. It also could detrimentally affect the larger financial marketplace.

This rule also would require CCAs to implement policies and procedures for the regular review of material risks relating to tiered participation agreements. Given that dependencies and interconnections stemming from these arrangements are subject to market forces, the

Commission reasons that risks can change over time, necessitating a regular review. We agree that regular reviews are important for assessing the CCA's ability to perform prompt and accurate clearance and settlement, protect investors and the public interest and safeguard the securities and funds, in keeping with its mandate under the Exchange Act.

Rule 17Ad-22(e)(21)—Efficiency and Effectiveness

Under this proposed rule, a CCA's policies and procedures would seek to ensure that it is operating in both an efficient and effective manner so as to meet the requirements of its participants, as well as the market it serves. The CCA also would have to review a number of its operational structures and processes in terms of efficiency and effectiveness, including its

- Clearing and settlement arrangements;
- Operating structure, including risk management policies, procedures, and systems;
- Scope of products cleared, settled, or recorded; and
- Use of technology and communication procedures.

For purposes of this rule, "efficiency" generally refers to "the efficient use of resources by a clearing agency to perform its functions" and "effectiveness" refers to "its ability to meet its intended goals and objectives." The Commission notes that inefficiency or ineffectiveness of a CCA may distort financial activity and increase risks to both members and indirect participants, which ultimately could undermine the perception of the CCA and result in added risks to the U.S. financial system. Inefficiency also may result in higher costs for investors and those transacting on behalf of investors.

We support the proposed review by CCAs of efficiency and effectiveness as necessary and prudent for all clearing agencies. We also believe the specific areas that should be included in the review, as noted in the proposal, are appropriate.

Rule 17Ad-22(e)(22)—Communication Procedures and Standards

This proposed rule would require CCAs to use (or at a minimum accommodate) "relevant internationally accepted communication procedures and standards" in their payment, clearing and settlement operations. Given that this is generally the accepted practice, the Commission believes that CCAs will need to make only limited changes to meet the requirements of the rule.

We agree that use of internationally accepted communications is an appropriate requirement that will foster comity and efficiency on a global basis. As the Commission notes, this practice of standardization, including the protocols for exchanging messages and reference data, should serve to reduce errors, improve efficiency and reduce barriers to entry. We also agree that it will result in more effective communication with direct and indirect participants, resulting in a more prompt and accurate process.

Rule 17Ad-22(e)(23)--Disclosure of Rules, Key Procedures, and Market Data

We generally support the proposed requirements for CCAs to have policies and procedures for providing the disclosures listed in the proposal. As proposed, a CCA would have 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 in transaction volume and values." CCAs could meet this requirement by posting the information on their websites.

As part of their disclosure obligations, CCAs would have policies and procedures leading to a "comprehensive public disclosure:" of their "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." These disclosures also would have to include "basic data and performance statistics" that would enable relevant parties and the general public to have the data for performance targets, actual performance and targets for recovery.

We again agree that the types of information listed in this proposal are needed to enhance the transparency of this market system and allow investors and other participants to obtain the information they need to evaluate CCAs, and should be required of all CAs and CCAs. We also share the hope that this approach will promote transparency in the market, and add to market discipline.

Rule 17Ab2-2—Determinations Relating to Covered Clearing Agencies

Proposed Rule 17Ab2-2 would create procedures that give the Commission authority to make three types of determinations regarding covered clearing agencies. Each determination would provide for public input and at least a 30-day comment period.

First, the Commission would have authority to determine whether a registered clearing agency qualifies as a CCA. This process could be initiated either by the Commission itself or by a clearing agency or any of its members. The Commission reasons that procedures for making such determinations would allow it to evaluate entities when characteristics of the entities or market conditions change that raise concerns about an entity's systemic risk implications.

Second, the Commission would be able to make a determination of whether a CCA is "systemically important in multiple jurisdictions." The proposal sets out factors the Commission may consider in making this determination, including whether the CCA is a designated clearing agency, and whether the clearing agency has been deemed systemically important in a jurisdiction other than the U.S. The Commission could consider additional factors, all well.

Third, the Commission would have the authority to decide if a clearing agency that provides counterparty services (in addition to those that clear security-base swaps and are already

registered with the Commission) have "a more complex risk profile" in accordance with certain factors.

We support the approach taken under this proposed rule. In order to get in front of systemic failures and the cascading effect on the markets, the Commission needs the authority to make these determinations, whether on its own initiative, or at the request of others. Having defined procedures for making the determinations and allowing for public input add transparency and consistency to this process.

Conclusion

CFA Institute shares concerns about the systemic risk of covering clearing agencies and welcomes the proposed measures to address vulnerabilities before widespread problems arise as prudent and necessary. At the same time, we urge the Commission and the FSOC to reconsider whether the central clearing of one-of-a-kind OTC swaps and derivatives is the appropriate way to manage risks in this area of finance, given the size, complexity and importance of CCAs. Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at [redacted] or [redacted]; or Linda L. Rittenhouse at [redacted] or [redacted].

Sincerely,

/s/ Kurt N. Schacht

Kurt N. Schacht, CFA
Managing Director, Standards
and Financial Market Integrity
CFA Institute

/s/ Linda L. Rittenhouse

Linda L. Rittenhouse
Director, Capital Markets
CFA Institute