



Submitted electronically via SEC.gov  
Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Brussels, 5 June 2023

Subject: File No. S7-06-23; Release No. 34-97142

Cybersecurity Risk Management Rule for Broker-Dealers, Clearing Agencies, Major Security-Based Swap Participants, the Municipal Securities Rulemaking Board, National Securities Associations, National Securities Exchanges, Security-Based Swap Data Repositories, Security-Based Swap Dealers, and Transfer Agents

Dear Secretary Countryman,

Euroclear Bank SA/NV ("**EB**") appreciates the opportunity to comment on the above-referenced release ("**Cybersecurity Proposal**")<sup>1</sup> issued by the Securities and Exchange Commission ("**Commission**"), which proposes a new rule to require certain entities to address cybersecurity risks ("**Rule 10**"), a related new form ("**Form SCIR**") and related amendments to other existing rules under the Securities Exchange Act of 1934 ("**Exchange Act**").<sup>2</sup>

The Commission issued the Cybersecurity Proposal on March 15, 2023, on the same day that it proposed amending the Commission's Regulation Systems Compliance and Integrity ("**Regulation SCI Proposal**").<sup>3</sup> The Cybersecurity Proposal and the Regulation SCI Proposal (together, "**Proposals**") are part of a series of proposals by the Commission aimed at addressing cybersecurity and technological risk to the U.S. markets. If adopted, both Proposals would impose new obligations on entities

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<sup>1</sup> Cybersecurity Risk Management Rule for Broker-Dealers, Clearing Agencies, Major Security-Based Swap Participants, the Municipal Securities Rulemaking Board, National Securities Associations, National Securities Exchanges, Security-Based Swap Data Repositories, Security-Based Swap Dealers, and Transfer Agents, Release No. 34-97142 (Mar. 15, 2023), 88 Fed. Reg. 20212 (Apr. 5, 2023) ("**Cybersecurity Release**").

<sup>2</sup> 15 U.S.C. §78a *et seq.*

<sup>3</sup> Regulation Systems Compliance and Integrity, Release No. 34-97143 (Mar. 15, 2023), 88 Fed. Reg. 23146 (Apr. 14, 2023) ("**Regulation SCI Release**").



that have been exempted from registration as a clearing agency ("**Exempt Clearing Agencies**"), including EB.<sup>4</sup>

As an entity that would be directly affected by both Proposals,<sup>5</sup> EB appreciates the Commission's extensive requests for comment on the Proposals. This letter provides EB's comments regarding the Cybersecurity Proposal. In addition, EB has submitted a comment letter with regard to the Regulation SCI Proposal. In light of the complexity of the Proposals and the concurrent comment periods,<sup>6</sup> EB has restricted its comments in both letters to questions specifically related to the application of the Proposals to Exempt Clearing Agencies. We believe other commenters will address more universal elements of the Proposals.

### **Executive Summary of EB Comments to the Cybersecurity Proposal**

EB believes that the Commission should reconsider elements of the Cybersecurity Proposal that relate to Exempt Clearing Agencies, for the reasons stated in this letter.

*The Cybersecurity Proposal should reflect key differences among Exempt Clearing Agencies, particularly for non-U.S. Exempt Clearing Agencies*

Exempt Clearing Agencies diverge substantially in their specific activities, regulatory status, and potential impact of any associated technology risks on U.S. markets. Of particular relevance to the Cybersecurity Proposal, two Exempt Clearing Agencies are non-U.S. clearing agencies ("**Foreign Exempt Clearing Agencies**").<sup>7</sup> These Foreign Exempt Clearing Agencies are international central securities depositories ("**CSDs**").<sup>8</sup> The Commission has provided exemptions to permit these Foreign Exempt Clearing Agencies to perform clearing agency functions for their U.S. customers in relation to certain types of U.S. securities ("**Exempted Activities**"). The Exempted Activities of each Foreign Exempt Clearing Agency are limited both in size and scope, as reflected in the respective conditions of exemption imposed by the Commission. For example, pursuant to the 2016 EB Exemption Order, EB is permitted to provide clearing agency functions in Belgium for its U.S. clients in U.S. government securities without registering with the Commission as a clearing agency, but subject to a limited volume cap.<sup>9</sup> EB is also permitted to provide

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<sup>4</sup> EB is exempted from registration as a clearing agency pursuant to Commission order in 1998, as modified by Commission orders in 2000 and 2016. See Order Approving Application for Exemption from Registration as a Clearing Agency, Release No. 34-39643 (Feb. 11, 1998), 63 Fed. Reg. 8232 (Feb. 18, 1998); Order Approving Application to Modify an Existing Exemption Order from Clearing Agency Registration, Release No. 34-43775 (Dec. 28, 2000), 66 Fed. Reg. 819 (Jan. 4, 2001); and Order of the Commission Approving an Application to Modify an Existing Exemption from Clearing Agency Registration, Release No. 34-79577 (Dec. 16, 2016), 81 Fed. Reg. 93994 (Dec. 22, 2016) ("**2016 EB Exemption Order**").

<sup>5</sup> EB would meet the proposed definition of "**Covered Entity**" under the Cybersecurity Proposal. See Cybersecurity Release, *supra* note 1, at 20343 (proposed §242.10 (a)(1)(ii)). EB would also meet the proposed amended definition of "**Exempt Clearing Agency**" and the proposed amended definition of "**SCI Entity**" under the Regulation SCI Proposal. See Regulation SCI Release, *supra* note 3, at 23268 (proposed amended §242.1000).

<sup>6</sup> EB agrees with other commenters that have suggested that a longer comment period is needed for commenters to fully address the questions posed by the Commission in the Proposals and urges the Commission to extend the comment period for both Proposals.

<sup>7</sup> See Cybersecurity Release, *supra* note 1, at 20220 (note 71 and accompanying text).

<sup>8</sup> EB is a global provider of clearance, settlement, collateral management, and related services with more than fifty years of providing services across multiple markets. See, e.g., 2016 EB Exemption Order, *supra* note 4, at 93995.

<sup>9</sup> See 2016 EB Exemption Order, *supra* note 4, at 93994 - 93995 (note 10 and accompanying text) and at 93996 (note 35 and accompanying text).



clearing agency functions in Belgium for its U.S. clients in U.S. equity securities, but limited to collateral management services.<sup>10</sup> As explained below, the Commission should take into account the limited Exempted Activities and other distinguishing features of Foreign Exempt Clearing Agencies in considering whether and how to apply the Cybersecurity Proposal to Exempt Clearing Agencies.

*Determining whether and how the Cybersecurity Proposal should apply to Foreign Exempt Clearing Agencies (Section 1 below)*

- Where the Commission has imposed operational risk conditions on a Foreign Exempt Clearing Agency as a condition of exemption that are similar to the proposed cybersecurity requirements, the Commission should rely on such existing conditions rather than requiring compliance with Rule 10 and related requirements under the Cybersecurity Proposal.
- If the Commission determines to apply Rule 10 and related requirements proposed in the Cybersecurity Proposal to Foreign Exempt Clearing Agencies, the requirements should not apply at entity level; instead, any such requirements should apply only to the Exempted Activities of Foreign Exempt Clearing Agencies.

*Permitting substituted compliance and exemption for Foreign Exempt Clearing Agencies (Section 2 below)*

- If the Commission requires Foreign Exempt Clearing Agencies to comply with Rule 10 and related requirements, it should permit substituted compliance by such Foreign Exempt Clearing Agencies to the same extent as proposed for non-U.S. SBS Entities.<sup>11</sup>
- If the Commission requires Foreign Exempt Clearing Agencies to comply with Rule 10 and related requirements, it should permit exemption for Foreign Exempt Clearing Agencies that are regulated consistently with the Principles for Financial Market Infrastructures ("**PFMIs**"),<sup>12</sup> consistent with the Commission's approach to European Union regulated central counterparties ("**CCPs**").

*Interaction among obligations on Exempt Clearing Agencies*

- We respectfully request the Commission to provide greater clarity as to how the obligations of Exempt Clearing Agencies under both Proposals would interact with each other and with the conditions of exemption applicable to each Foreign Exempt Clearing Agency. The Commission should avoid creating duplicative obligations without a clear risk-based justification for imposing additional costs and burdens.
- To the extent the Commission imposes new obligations on the Foreign Exempt Clearing Agencies, the relevant exemption orders should be modified to so reflect.

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<sup>10</sup> See 2016 EB Exemption Order, *supra* note 4, at 93995 (note 14 and accompanying text).

<sup>11</sup> See Cybersecurity Release, *supra* note 1, at 20214 (definition of SBS Entities).

<sup>12</sup> See Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Principles for financial market infrastructures* (Apr. 16, 2012).



## **Additional Detailed EB Comments to the Cybersecurity Proposal**

### **1. Determining whether and how the Cybersecurity Proposal should apply to Foreign Exempt Clearing Agencies**

*The Commission should rely on existing operational risk conditions that apply to EB under the 2016 EB Exemption Order*

The Commission has already used its existing exemption process to impose operational risk conditions on EB that are similar to proposed cybersecurity requirements. These conditions were imposed in lieu of an obligation to comply directly with Regulation SCI, taking into account the specific activities, regulatory status, and associated technology risks described in EB's application for exemption and in the Commission's exemption order. As part of the Commission's assessment of EB's application for modification of its exemption order in 2016, the Commission has already considered the appropriateness and proportionality of these operational risk conditions. EB also provides the Commission with regular reporting demonstrating how it complies with these operational risk conditions and the Commission retains examination authority to confirm EB's compliance.

EB believes that these conditions are sufficient to address many of the proposed cybersecurity requirements and the Commission has not identified in the Cybersecurity Proposal any need to replace these operational risk conditions with the proposed new cybersecurity requirements. Accordingly, EB believes that the Commission should continue to rely on the operational risk conditions that it has already imposed on EB in the 2016 EB Exemption Order. If there are any areas where the Commission determines that such conditions are not comparable to the proposed cybersecurity requirements and there is a material reason to remedy any identified consequential gap, we respectfully propose an incremental approach that targets new requirements only to identified material areas of difference rather than a wholesale replacement of such conditions.

*Any new cybersecurity requirements should not apply to Foreign Exempt Clearing Commission at the entity level; they should apply only to the Exempted Activities*

The Foreign Exempt Clearing Agencies are international CSDs that operate outside of the U.S. in global markets, for multinational customers and in relation to securities of issuers in many countries. As noted previously, the Exempted Activities of the Foreign Exempt Clearing Agencies are limited both in size and scope, as reflected in the conditions of exemption imposed by the Commission. EB's Exempted Activities thus represent a limited proportion of its overall activities, as well as a limited proportion of relevant U.S. securities markets.<sup>13</sup> Application of the requirements at entity level to Foreign Exempt Clearing Agencies would, among other things, apply cybersecurity requirements that are largely based on U.S.

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<sup>13</sup> The Commission states in the Cybersecurity Proposal that "[c]learing agencies are critical to the orderly and efficient operation of the U.S. securities markets through the centralized clearing and settlement services they provide as well as their role as securities depositories, with exempt clearing agencies serving an important role as part of this process." (*emphasis added*). Cybersecurity Release, *supra* at note 1, at 20231. EB notes that the Commission does not explain how the Foreign Exempt Clearing Agencies play an "important role", in light of the limited scope and size of the Exempted Activities.



technology standards and norms<sup>14</sup> to non-U.S. markets and non-U.S. customers that are subject to different local technology standards and norms. This outcome would be disproportionate to the limited size and scope of the Exempted Activities. Moreover, the Commission has not articulated the need or benefit to impose the proposed cybersecurity requirements at entity level for these Foreign Exempt Clearing Agencies. For these reasons, if the Commission determines to apply the proposed cybersecurity requirements to Foreign Exempt Clearing Agencies, the proposed requirements should not apply at entity level. Instead, any such proposed requirements should apply only to the Exempted Activities of Foreign Exempt Clearing Agencies.

## **2. Permitting substituted compliance and exemption for Foreign Exempt Clearing Agencies**

EB believes that any decision to apply the proposed new cybersecurity requirements to Foreign Exempt Clearing Agencies should take into account the extent to which those entities are already subject to comparable standards under non-U.S. regulatory frameworks, by providing for the possibility for substituted compliance and exemption requests.

Exchange Act rules currently permit the Commission to make a determination that compliance with specified requirements under a foreign financial regulatory system may satisfy comparable Exchange Act requirements that would otherwise apply to a non-U.S. SBS Entity (a "**Substituted Compliance Determination**").<sup>15</sup> The Commission is proposing to permit non-U.S. SBS Entities to seek a Substituted Compliance Determination with respect to the proposed new cybersecurity requirements. In making this proposal, the Commission has recognized that non-U.S. regulatory regimes may achieve regulatory outcomes that are comparable to the Commission's proposed cybersecurity requirements.<sup>16</sup> It also recognized that allowing for the possibility of substituted compliance may help achieve the benefits of the proposed cybersecurity requirements in a manner that avoids duplicative costs and regulatory conflicts for non-U.S. entities, particularly if the proposed cybersecurity requirements apply on an entity level.<sup>17</sup>

In addition, as noted in the Cybersecurity Proposal, the Commission has previously recognized that certain European Union market regulations are comparable to corresponding Exchange Act regulations. On this basis, the Commission published a statement explaining how clearing agencies that act as CCPs and that are subject to the European Markets Infrastructure Regulation ("**EMIR**") may request an exemption from regulations applicable to U.S. registered clearing agencies where the CCP has determined that the application of such requirements would impose unnecessary, duplicative, or inconsistent requirements in light of EMIR requirements to which it is subject.<sup>18</sup> The Commission noted particularly that both the relevant

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<sup>14</sup> See, e.g., Cybersecurity Release, *supra* at note 1, at 20226 note 117.

<sup>15</sup> See Cybersecurity Release, *supra* note 1, at 20316 (Substituted Compliance for Non-U.S. SBS Entities) and at 20264 – 20265 (Cross-Border Application of the Proposed Cybersecurity Requirements to SBS Entities).

<sup>16</sup> *Id.* at 20316 (Substituted Compliance for Non-U.S. SBS Entities, Benefits).

<sup>17</sup> *Id.*

<sup>18</sup> See *Statement on Central Counterparties Authorized under the European Markets Infrastructure Regulation Seeking to Register as a Clearing Agency or to Request Exemptions from Certain Requirements Under the Securities Exchange Act of 1934*, Release No. 34-90492 (Nov. 23, 2020), 85 Fed. Reg. 76635 (Nov. 30, 2020). See also Cybersecurity Release, *supra* note 1, at 20220 note 71.



Exchange Act regulations and EMIR were intended to implement the PFMI standards, which are well known to the Commission.<sup>19</sup> As a European CSD, EB is also subject to European Union regulation that implements the PFMIs.<sup>20</sup> In 2016, EB explained the correlation between EB's adherence to the PFMIs under its applicable Belgian and European Union regulations and the Commission's implementation of the same PFMIs under Exchange Act regulations applicable to registered clearing agencies.

EB believes that the need for, and benefits of, a substituted compliance process relating to the proposed new cybersecurity requirements are equally applicable to the Foreign Exempt Clearing Agencies. Similarly, the Commission's reasons for permitting European Union CCPs to apply for exemptions from certain U.S. requirements apply equally to the Foreign Exempt Clearing Agencies. For these reasons, if the Commission would ultimately conclude that Foreign Exempt Clearing Agencies should comply with the proposed cybersecurity requirements, it would be appropriate for the Commission to foresee the possibility to grant substituted compliance to Foreign Exempt Clearing Agencies to the same extent as may be permitted for non-U.S. SBS Entities and to grant exemptions from the proposed cybersecurity requirements to the Foreign Exempt Clearing Agencies that act as CSDs to the same extent as may be permitted for non-U.S. CCPs that are subject to European Union law and regulation.

### **Conclusion**

Thank you for your consideration of these comments. We would be happy to provide additional information regarding the views expressed in this letter. Please do not hesitate to contact the undersigned at any time at [peter.sneyers@euroclear.com](mailto:peter.sneyers@euroclear.com) or my colleagues Emmanuelle Liesse at [emmanuelle.liesse@euroclear.com](mailto:emmanuelle.liesse@euroclear.com).

Very truly yours,

A handwritten signature in black ink, appearing to read "Sneyers".

Peter Sneyers

CEO

A handwritten signature in black ink, appearing to read "Bernard".

Stephane Bernard

COO

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<sup>19</sup> Id.

<sup>20</sup> In addition to being a Foreign Exempt Clearing Agency, EB is a CSD, licensed under Regulation (EU) 909/2014 of the European Parliament and Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories ("CSDR"). The CSDR implements the PFMIs for E.U. CSDs. See, e.g., recital 6 of CSDR. EB is also authorized as a credit institution pursuant to the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms (the "Banking Law") to provide banking ancillary services under CSDR (limited purpose banking license). EB also operates a securities settlement system ("SSS") in the meaning of Directive 98/26/EC implement in Belgium through the Law of 28 April 1999. In addition, as of 2025, EB and other E.U. CSDs will be required to comply with the E.U.'s Regulation on Digital Operational Resilience for the financial sector (entering into force in January 2025), available at [L\\_2022333EN.01000101.xml \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2022/333/01/20220101) ("DORA"). DORA will implement obligations comparable to proposed cybersecurity requirements.