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October 7, 2022

VIA EMAIL

Vanessa Countryman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
USA

Re: Clearing Agency Governance and Conflicts of Interest; RIN 3235-0695; File No S7-21-22

Dear Ms. Countryman:

The London Stock Exchange Group ("LSEG") is pleased to file a response to the request for comment on the U.S. Securities and Exchange Commission's ("SEC") proposed rules for clearing agency governance and conflicts of Interest[1].

LSEG is a leading global financial markets infrastructure and data business, with significant operations in the United States. We play a vital social and economic role in the world's financial system. With our trusted expertise and global scale, we enable the sustainable growth and stability of our customers and their communities. We are leaders in data and analytics, capital formation and trade execution, and clearing and risk management.

LSEG operates multiple clearing houses. It has majority ownership of the multi-asset global CCP operator, LCH Group (LCH). LCH has two licensed CCP subsidiaries – LCH Ltd in the UK and LCH SA in France. Both are leading multi-asset class and international clearing houses, serving major international exchanges and platforms as well as a range of OTC markets. They clear a broad range of asset classes, including securities, exchange-traded derivatives, commodities, foreign exchange derivatives, interest rate swaps, credit default swaps and Euro, Sterling and US Dollar denominated bonds and repos. LCH SA has been registered with the SEC as a Clearing Agency since 2017[2].

LSEG commends the SEC's objective to improve the safety and transparency of the financial markets and we support regulatory enhancements to the global structure governing derivatives markets that have resulted in a comprehensive and robust risk management framework for clearing agencies, clearing members, and end-users of derivatives. We also support the SEC's ongoing efforts to promote international cooperation, further enhance global harmonization of derivatives regulation, and provide an appropriate level of deference to regulatory counterparts in other jurisdictions.

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[1] Proposed rule; withdrawal of proposed rules: Clearing Agency Governance and Conflicts of Interest (sec.gov)
[2] LCH SA has also been a registered DCO with the U.S Commodity Futures Trading Commission since 2013

Please find below specific comments to select questions of the SEC's request. LSEG stands ready to support and contribute further on this important initiative.

Sincerely,

Claire O'Dea
Director, Government Relations and Regulatory Strategy, Americas
London Stock Exchange Group

Request for Comment

A. **Board Composition and Requirements for Independent Directors**

Proposed Rules 17Ad-25(b), (e) and (f)

1. ***Is requiring that the boards of registered clearing agencies have a majority of independent directors an effective tool for ensuring a transparent and objective governance process that balances the potentially competing or divergent interests of owners and participants? Has the Commission accurately described the benefits of independent directors, as defined in this release, to the board of a registered clearing agency? Why or why not?***

LSEG respectfully notes that European Market Infrastructure Regulation ("EMIR") requires at least one third, and no less than two members, of the board to be Independent Non-Executive Directors ("INEDs"). We do not believe that adding more INEDs would lead to greater transparency and objective governance as it is also important that the shareholders and the company are represented. If registered clearing agencies' boards were to be comprised of INEDs as the majority, this would lead to very large boards, which may be functionally inefficient.

At LCH SA, the total composition of the board allows for twelve directors, of which five are INEDs, including the chair of the board. Additionally, the chairs of the nomination committee, remuneration committee, audit committee, risk committee, the technology security and resilience committee (together the "sub-committees") are also INEDs. The composition of each sub-committees requires a majority to be INEDs.

We employ a strong conflict of interest policy and provide our INEDs with additional powers with respect to conflict of interest matters. We have been operating in this manner since 2013 and this has worked well. Further, since 2020, LCH SA has adopted the approach that the independent chair of the board cannot serve on the board of another clearing agency within the group.

We would like to note that under the regulations governing LCH SA, the definition of INEDs is narrower than that defined by the SEC. For example, representatives of clearing members would not be considered as INEDs, regardless of whether the clearing member is also a shareholder. We believe that where a stricter definition of an INED applies (i.e., no clearing member representative) the threshold should apply. We therefore support further alignment with the requirements of EMIR.

2. ***Are there other ways to define "independent director" or "material relationship" that would achieve the Commission's goals? If so, what are they? Should the Commission establish a numerical threshold, such as $100,000 annually, for compensatory relationships in order for them to be considered material under this rule? If so, what should that numerical threshold be? Please be specific. Should the Commission create a list of the types of relationships that should be considered either material or that could affect the independent judgment or decision-making of a director under this rule, and should that list distinguish between compensatory and non-compensatory relationships? Why or why not?***

LSEG believes that the definition of "material" should be left to the judgement of the clearing agency and its nomination committee. A set level of compensation does not define the level of independence and it is difficult to

set a threshold ex ante. In general, we believe the numerical threshold should be very low and not hamper impartial judgment. It should also be the responsibility of the nomination committee to document this.

We also note that under EMIR, an 'independent member' of the board means a member of the board who has no business, family, or other relationship that raises a conflict of interest regarding the clearing agency concerned. This also applies to its controlling shareholders, its management, or its clearing members, who has had no such relationship during the five years preceding their membership of the board.

3. ***Should the Commission define the term "control" in the proposed rules? If so, would it be appropriate to adopt a definition similar to the one in 17 CFR 246.2, which states that control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise?***

As above, LSEG believes that "control" should be determined by the nomination committee. However, the analysis should be documented and auditable.

4. ***What is the appropriate percentage of independent directors on the board of a registered clearing agency? Does the requirement for a majority of directors to be independent directors support the goals discussed in this proposal? Would another threshold be more effective at addressing diverging views among owners, participants, and other relevant stakeholders in the registered clearing agency? For example, would a requirement that one-third of the directors be independent (which has been adopted by European jurisdictions) provide the benefits of independent directors without any of the potential drawbacks? Please explain.***

INEDs play an important role in reflecting independent and transparent judgement. We believe it is important that the chair of the board is independent to ensure full transparency in the decision-making process. Any decision regarding independence and conflicts of interest should be taken by the INEDs. However, as the board makes decisions in relation to budget, investments, and commercial strategy, directors representing shareholders and members support a more rounded view and the challenges of the business. As such, we believe that aligning with the requirements of EMIR (at least one third and no less than two members of the board to be INEDs) would be appropriate and support harmonization with global standards.

5. ***Is the application of director independence requirements appropriate for all registered clearing agencies, or should there be distinctions made among registered clearing agencies based on certain factors, such as organizational structure or products cleared? If so, what factors are relevant and why? Would these proposed rules apply to all types of organizational structures in a consistent manner, or would they impede a registered clearing agency from changing its organizational structure into a more innovative or efficient structure?***

Application of director independence is appropriate and should apply to all registered clearing agencies. There is no need for a distinction.

6. ***Is a one-year lookback period adequate for purposes of the "material relationship" definition and proposed Rules 17Ad-25(f)(2)-(6)? For example, is a one-year time period for the receipt of certain payments by clearing agencies the appropriate length of time to determine that a director is precluded from being considered independent? How will this impact the ability of clearing agencies to recruit experienced persons to serve as directors? More generally, how large is the pool of potential directors that could serve as independent directors, as defined in this release, on the boards of registered clearing agencies? Are there particular elements of the independent director definition that limit the pool of potential independent directors? Should those elements be modified to expand the pool?***

We respectfully note that a five-year lookback is required under EMIR regulation. Although this may appear to be a long lookback period, a one-year lookback could also be considered a short timeframe as the receipt of some payments can remain (payments to material risk takers can be deferred for up to four years), some projects to which the person has played a key role may not be delivered, and informal relationships may remain. Therefore, we consider a longer period of three to five years to be appropriate, as this would be an adequate lookback, but also allow for clearing agencies to have sufficient flexibility when recruiting new directors.

7. ***Is it appropriate to include affiliates of registered clearing agencies as relevant to the consideration of material relationships of independent directors, as well as certain scenarios that preclude independence?***

In determining whether a person is fit for appointment as an independent director, it should be necessary to consider whether such person is independent in character and judgment, and whether there are relationships or circumstances (including any affiliate) which are likely to affect, or could appear to affect, such person's judgment. Therefore, if criteria are satisfied, an independent director could be considered independent, even if they hold a non-executive role at another clearing agency within the same group. This can allow for consistency in risk management and cross fertilization within a group.

Under EMIR, a clearing agency that is part of a group shall consider any implications of the group for its own governance arrangements. This includes whether it has the necessary level of independence to meet its regulatory obligations as a distinct legal person, whether its independence could be compromised by the group structure, or by any board member also being a member of the board of other entities of the same group. Such a clearing agency shall consider specific procedures for preventing and managing conflicts of interest, including with respect to outsourcing arrangements.

8. ***Is the scope of the scenario in proposed Rule 17Ad-25(f)(4) overly broad or overly narrow in covering all partners, regardless of relative holdings, and controlling shareholders? Should this provision cover all shareholders, or non-managing partners, instead? Why or why not?***

When considering independence, it is common practice to assess the shareholdings and other positions of nominee candidates, including those of their family members. The proposed scope is broad, regardless of the nature of holding or partner role, consideration would need to be given to the other tests of independence – i.e., could such position affect, or appear to affect, such person's independence and judgment. Further, the extent to which a nominee is a controlling shareholder is subjective. Within the European Union, the model of partnership is less commonly applied to entities which are likely to provide nominees with relevant experience which would qualify them for directorships at a clearing agency.

9. ***The Commission is proposing in Rule 17Ad-25(f)(3) to carve out directors who are serving as directors on other boards from the list of scenarios that explicitly preclude independence. Is this carve-out appropriate in order to permit a director of a registered clearing agency who also serves as a director of another legal entity to qualify as independent (provided all other requirements are met), or should there be some restrictions, such as restrictions on serving as a director of an affiliate, or participant? Why or why not?***

LSEG agrees with the proposal to carve out directors serving on other boards. It is important that directors can serve as independent directors on the boards of affiliates of the same company. Affiliates share common interests, infrastructure and evolve in similar environments. Serving on several boards helps the INED bring expertise and cross fertilization across a group. If any specific conflict would appear, it would be dealt with through the conflict of interest policy. However, it is also important that the number of mandates should be reasonable to ensure they have sufficient time to devote to the clearing agency.

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11. ***The Commission requests comment on whether the proposed approach to board composition and board member independence may raise compliance issues with respect to being registered with the Commission and the CFTC or a non-U.S. regulatory authority. If so, what steps should the Commission take to continue to facilitate dually registered clearing agencies?***

The proposed approach does not raise any compliance issues by itself. However, we note that it would require dually registered clearing agencies to perform two conflict of interest analysis as it is possible that under different definitions, one director could be considered an independent under one jurisdiction but not in another. In practice, it would mean that the clearing agency would have to meet the highest standard, reducing the number of possible candidates. We laud the SEC for considering harmonization with other jurisdictions and encourage alignment where possible.

12. ***The Commission requests comment on whether the requirement to undergo a broad consideration of facts and circumstances when determining whether a board member is independent is sufficiently clear. Is there additional guidance needed on what sources could be consulted or what types of relationships could be considered?***

LSEG believes that the definition is not too prescriptive as it is important to make sure that all specific cases are covered. However, each clearing agency should perform their own analysis and decide whether a director can be considered independent. Additionally, if a potential conflict is not listed in the SEC requirements, it should still be given full scrutiny per the clearing agencies' conflict of interest policy.

13. ***The Commission is applying the lowered threshold applicable to registered clearing agencies whose voting interests are majority-held by participants, or whose parent company's voting interests are majority-held by the registered clearing agency's participants. Does this scope strike the right balance between permitting flexibility in ownership structures versus providing the lowered threshold of 34 percent independent directors only when warranted (i.e., when the interests of participants and owners are less likely to diverge when participant-owners are the holders of voting interests)? Why or why not?***

In line with the SEC's comments, we consider all representatives of participants to have an interest in the clearing agency, and therefore they cannot be INEDs, even if the participant is not a shareholder. We believe that the EMIR requirement of at least one third, and no less than two members, of the board to be INEDs is an appropriate threshold, and it should apply to all clearing agencies and participant representatives excluded from being INEDs.

14. ***Should the Commission permit directors who have material relationships with participants (such as being an employee of a participant), other than those relationships that are explicitly precluded in Rule 17Ad-25(f), to meet the definition of independent director, or should these relationships be precluded as well? Should the Commission be more restrictive, as is proposed in paragraph (f)(2), with respect to compensation and payments received from the registered clearing agency or its affiliates, rather than participants? Why or why not?***

We believe that directors who have material relationship with participants should not meet the definition of independent whatever this material relationship may be, as this would likely affect, or could appear to affect, such person's judgement and independence.

15. ***The Commission is soliciting comment on how to view participant clearing fees or other payments from participants that generate revenue for the clearing agency as a potential scenario that precludes director independence. Is it sufficiently clear in the text of proposed Rule 17Ad-22(f)(4) that revenues from participants are covered under the scope of this prohibition? Should the Commission treat revenues from participants differently from other sources of revenues or expenditures? Should the Commission create a carve out for lower levels of revenues in order to promote the opportunity for partners or controlling shareholders of small participants to be able to qualify as an independent director, such as by creating a minimum threshold of payments covered by this provision? Why or why not?***

We believe that any revenue would prevent a participant from being considered independent. Setting a minimum that would apply for all would be arbitrary and would not guarantee independence as even a small amount can potentially create a conflict.

16. ***The Commission is proposing an extensive list of natural persons who fall within the definition of family member for this rulemaking, along with legal entities under their 63 control. Has the Commission chosen an appropriate scope for the definition of family member, or is the definition unworkable, either because it is overbroad, or because it misses an important category of persons?***

The list is appropriate, and we have no further comments at this time.

17. ***Should the Commission define "family member" to refer to "spouse or spousal equivalent"? Why or why not? Is adding "spousal equivalent" unnecessary because such person would be covered as "any person (other than a tenant or employee) sharing a household," which is already part of the definition? Please explain.***

We agree that "sharing a household" is the right definition as it is a broader definition than using "spousal equivalent".

18. ***The Commission is not specifying particular roles for several aspects of this rulemaking, such as who makes the determination that a director is an independent director. Should the Commission be more prescriptive and specify whose responsibility it is to make such a determination? Why or why not?***

We believe that the Commission could be more prescriptive by indicating that the nomination committee is responsible to perform the independence analysis and in describing their role in proposing the nomination of the INEDs to the board. This aligns with the approach that LCH SA takes for its appointments.

B. Nominating Committee

proposed Rule 17Ad-25(c)

19. ***Is it appropriate for the Commission to require that the nominating committee be the exclusive venue for evaluating nominees for director to the board of directors? What alternative arrangements or processes might also be appropriate for evaluating director nominees? Should the rules incorporate such arrangements? Why or why not? Please explain.***

At LSEG, we believe the nomination committee should be the exclusive vehicle for evaluating nominees as it has the right level of seniority and independence to do so. It should also have clear policies and procedures in place to govern this evaluation.

20. ***Should the Commission be more prescriptive in requiring that certain types of stakeholders, such as smaller participants and customers, be afforded a right of participation in the board of a clearing agency? Why or why not? If so, which types of stakeholders? Please explain with specific information.***

In our view, we do not agree that the SEC should be more prescriptive in requiring that certain types of stakeholders, such as smaller participants and customers, be afforded the right of participation in the board of a clearing agency. There are benefits of member representation at the board, and we agree that clients should be invited for decisions impacting them. However, it is not practicable to determine who that should be and, therefore, it should be left to the discretion of the clearing agency and its board.

21. ***Do commenters agree with the Commission's assessment that requiring a majority of independent directors on the nominating committee will improve the quality of nominees? Please explain.***

LCH SA's nomination committee is comprised of a majority of INEDs. We believe this improves the independence of decision making (including consideration of the individual and collective suitability of nominees) and supports the impartiality of the conflict of interest analysis. Overall, the quality of nominees will be dependent and subject to the availability and identification of suitable candidates. The field of candidates could be reduced if certain specific skill sets/qualifications are required to fulfil certain roles i.e., chair of audit committee, risk committee etc.

22. ***Do commenters believe that the proposed rule will help ensure that the nominating committee considers nominees that represent the views of smaller participants and clients of participants? Please explain. Should the Commission consider additional specific composition requirements? Why or why not? If so, what should those requirements be?***

As the role of independent directors is to represent independent views, there is not a reason for them to represent the views of any specific minority such as smaller participants or clients.

23. ***Has the Commission provided sufficient specificity regarding the scope and content of the evaluation process for director nominees? Please identify and explain other types of criteria, if any, that should be included in the evaluation process for director nominees. Please identify and explain any proposed criteria that should be excluded from the evaluation process for director nominees.***

It is important that a wide range of expertise is represented at the board, covering a broad range of knowledge from areas such as Risk, IT, Finance, Accounting, Legal and Compliance. In addition to the SEC's proposal, the nomination committee should develop procedures to evaluate nominees.

Risk Management Committee

1. **Proposed Rule 17Ad-25(d)**

24. The Commission is not proposing to carve out the risk management committee from the director independence requirements under proposed Rule 17Ad-25(e). Should the Commission include such a carve-out for the risk management committee so that a registered clearing agency would not be required to include independent directors on the committee? Why or why not? If not, should there be separate director independence requirements applicable only to the risk management committee that reflect the highly specialized risk management expertise needed to serve on the committee? Why or why not?

We note that independent directors are required under EMIR, hence LCH SA does not rely solely on experts from the participants and owners of the clearing agency. The INEDs selected for the Risk Management Committee ("RMC") must have good risk knowledge, and we support the RMC being chaired by an INED.

25. Is the proposed requirement that the registered clearing agency's risk management committee be a committee of the board a more effective way to structure the risk management committee than requiring that the risk management committee be an external committee, such as a management committee or an advisory committee? Why or why not? If not, should the risk management committee be structured to represent more participants, regardless of whether those participants are represented on a clearing agency's board? Why or why not?

We agree that this would be an effective way to structure the committee. As a board sub-committee, the RMC can be formally delegated certain authorities and would be subject to the same corporate governance regime of the company.

The RMC should be structured to represent more participants than the board. The remit of the board is wider, and it makes patrimonial decisions which may require more shareholder representation. However, neither clearing members or clients of clearing members should represent a majority.

26. The Commission is not specifying whose responsibility it is to determine the matters presented to the risk management committee for consideration. Should the Commission be more prescriptive and specify whose responsibility it is to make such determinations? If so, should the Commission

require the risk management committee to designate thresholds or identify the types of risk management related matters that warrant consideration by the committee? Why or why not? Please explain.

It is not necessary for the SEC to define the matters to be presented to the RMC and be overly prescriptive. Requiring that clearing agencies are explicit in the committee Terms of Reference ("TOR") would meet the SEC's objective as it should be sufficient to require that a board sub-committee maintain very clear TOR so committee members, board members, clearing agency employees and management are clear about its responsibilities. The responsibility to determine the matters in line with the TOR should be left to the decision of the chair, who should be an INED.

27. ***Is the proposed requirement that the risk management committee include at all times representatives from the registered clearing agency's owners and participants sufficient to help ensure that the directors serving on the committee will have the specific risk management expertise and relevant experience needed to make effective risk management decisions? Why or why not? In requiring that the risk management committee include such representatives at all times, should the Commission require that a specific percentage or number of representatives from the clearing agency's owners and participants serve on the risk management committee? Why or why not? If so, what percentage or number? Please explain with specific information.***

Requiring that the RMC includes representatives from the clearing agency owners and participants is not sufficient as it is important that members of the RMC have necessary levels of expertise to make effective risk decisions and provide sound advice. Further, owners are not permitted to be on the RMC under EMIR, which will create a conflict for dually registered clearing agencies.

28. ***Should the Commission require the risk management committee to include at all times a specific percentage or number of representatives from small participants of the clearing agency in addition to representatives from the owners and participants more generally, as proposed? Why or why not? If so, what percentage or number? Please explain with specific information.***

Requiring a specific percentage or number of representatives of small participants to serve on the RMC at all times is not necessary. The composition of the risk committee should be representative of the clearing members and clients and particularly include members who have expertise in the business activities of the clearing agency. We do not believe that small participants should be systematically represented since very small participants may not have this expertise, nor the required involvement.

29. ***The Commission is not specifying whose responsibility it is to determine the appropriate qualifications and expertise needed for a director to serve on the risk management committee. Should the Commission be more prescriptive and specify whose responsibility it is to make this***

determination, such as the nominating committee, or should this determination remain up to the discretion of the registered clearing agency? Why or why not? Please explain.

It should remain the discretion of the clearing agency to determine whether representatives of participants have the required skills given that these should be in line with the business and the risks faced by the clearing agency.

30. ***The Commission requests comment on whether the requirement that a risk management committee "reconstitute" its membership on a regular basis is sufficiently clear. Is there additional guidance needed on what "reconstitute" means? Is it sufficiently clear that the term "reconstitute" refers to the membership of the risk management committee and not to the form of the committee? Why or why not? Should the Commission instead require that the membership be "rotated"? Please explain.***

We would appreciate additional information on whether the Commission is referring to the participant firms who are represented or to the individuals representing them. E.g., if the representative of Bank A leaves their job and is replaced on the committee by another employee of Bank A, is that a reconstitution?

We believe it should be sufficient for a clearing agency to regularly (e.g., annually) review the membership of its RMC to ensure there is sufficient representation of its participants. DCOs should have flexibility in determining how best to rotate RMC members to maintain an appropriate balance between retaining member expertise and allowing for perspectives from new members. Further, frequent rotation could negatively impact risk management due to the loss of valuable knowledge and the time to find appropriate candidates with the right expertise.

31. ***Has the Commission provided a sufficient explanation for what constitutes "on a regular basis" with respect to how often a risk management committee is required to reconstitute its membership? Why or why not? Would a more specific reconstitution requirement be appropriate? For example, should this requirement specify a frequency for the risk management committee's reconstitution (e.g., annually)? Why or why not? If so, please explain what the appropriate frequency should be.***

As mentioned above, this should remain at the discretion of the clearing agency and a requirement is not needed.

D. Conflicts of Interest

Proposed Rules 17Ad-25(g) and (h)

32. ***Are proposed Rules 17Ad-25(g) and (h) sufficient to have registered clearing agencies address conflicts of interest within their governance arrangements? Why or why not? Please provide specific examples to illustrate your points, if possible.***

The clearing agency should have policies and procedures in place to address conflicts of interest. Additionally, the chair of the board and of each subcommittee should also be an INED to enforce these policies in full independence.

33. ***Do commenters agree with the potential conflict concerns that the Commission has identified? What effect would the identified conflicts of interest likely have? Should the Commission focus on any of these conflicts more than others? Are there other existing conflicts concerns that commenters believe warrant scrutiny? If so, what are they and how are they likely to affect registered clearing agencies? Which conflicts of interest could potentially cause the greatest harm to a registered clearing agency? Please explain.***

LSEG believes that clearing agencies should leverage the conflicts identified by the SEC to build its own policy. The chair of the board should make sure it is adequately enforced.

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36. ***In requiring registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to require a director to document and inform the registered clearing agency promptly of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director, does proposed Rule 17Ad-25(h) provide sufficient requirements to have directors document and inform the registered clearing agency promptly of potential conflicts of interest? Why or why not?***

Potential conflict can be identified by the clearing agency, but other potential conflicts (i.e., change in the personal status or activity) must be immediately disclosed by the director so the clearing agency can perform an analysis and take any necessary actions.

37. ***Is the "reasonably could affect" standard proposed in Rule 17Ad-25(h) sufficient? Why or why not?***

Yes, we believe this is sufficient and note that this standard would align with our current requirements.

E. Board Obligation to Oversee Service Providers for Critical Services

Proposed Rule 17Ad-25(i)

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39. ***In requiring registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the board to oversee relationships with service providers of critical services, should the Commission provide specific guidance regarding the means and measures by which the board performs such oversight responsibilities? Why or why not?***

We agree that it is a specific responsibility of the board to have oversight. However, there should be flexibility to allow the board to determine the process and materiality of service providers of critical services. For example, allowing the board to specifically delegate to a qualified sub-committee of the board, with appropriate escalation and reporting to the board.

40. ***In requiring registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to confirm and document that risks related to relationships with service providers for critical services are managed in a manner consistent with its risk management framework, should the Commission require—rather than provide as guidance, as currently formulated—that the board confirm and document the risks through a self-assessment as discussed above? Why or why not***

We support the requirement to have policies and procedures in place and agree with the guidance. However, such guidance should not be overly prescriptive as firms with mature risk management frameworks have implemented self-assessments, escalations and reporting to their boards.

F. Obligation to Formally Consider Stakeholder Viewpoints

Proposed Rule 17Ad-25(j)

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43. ***The proposed rule would require that a registered clearing agency solicit viewpoints regarding material developments in its governance and operations. Does limiting the topics for soliciting viewpoints to "material" aspects of a clearing agency's governance and operations provide for the appropriate scope of topics for which a clearing agency should solicit viewpoints? Why or why not? Should the rule limit the topics for soliciting viewpoints only to risk management? Why or***

why not? Conversely, should the set of topics be expanded to include topics such as participation requirements, products cleared, fees, new technologies, services, or other topics relevant to participants and other stakeholders? Please explain with specific examples, if possible

It is common practice to solicit feedback on operational matters, such as rule changes, prospective enhancement to services/risk management and fee changes. The governance structure of the clearing agency, where they meet regulatory requirements, are a matter for the board and executives and respective majority shareholder, where such clearing agency forms part of a wider group.

44. ***The proposed rule would require that the registered clearing agency solicit viewpoints on a recurring basis. How frequently should a registered clearing agency solicit viewpoints? Should the requirement apply on an annual basis, a quarterly basis, or some other frequency? How should a clearing agency balance the frequency of its outreach against the obligation to document its consideration of viewpoints received?***

This should be determined on a case-by-case basis depending on the topic and materiality to the clearing agency and to its members/relevant stakeholders.

45. ***Does the proposed rule interact with the board's fiduciary duty to the clearing agency? If so, how? Please explain with specific information.***

As the clearing agency already has processes for soliciting feedback on certain topics, there is no conflict. However, further legal analysis would be needed under the relevant jurisdictional requirements/legislation.

G. Considerations Related to Implementation and Compliance

46. Are the 180-day and 24-month compliance periods appropriate? Why or why not? Please be specific.

We respectfully request that clearing agencies are given sufficient time to change its board composition and its TORs, if necessary. Directors serve terms longer than the proposed compliance period, so to allow for an orderly transition for full compliance we would propose that a longer window of three years is considered.

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