

March 10, 2025

Submitted Electronically

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
1100 F Street, NE
Washington, DC 20549-1090

**Re: CME Securities Clearing, Inc.; Notice of Filing of an Application for
Registration as a Clearing Agency Under Section 17A of the Securities Exchange Act
of 1934 [Release No. 34-102200; File No. 600-44]**

Dear Ms. Countryman:

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ respectfully submits this comment letter to the Securities and Exchange Commission (the “Commission” or the “SEC”) in response to the CME Securities Clearing, Inc. (“CMESC”) application² for registration as a clearing agency under Section 17A of the Securities Exchange Act of 1934 (the “Exchange Act”). Terms used but not defined herein have the meaning in the CMESC Rules³ and Procedures.⁴

ISDA encourages the SEC to facilitate clearing of U.S. Treasuries at additional clearing agencies in light of the SEC’s clearing mandate.⁵ Subject to CMESC making the amendments and clarifications discussed herein with respect to its clearing model, ISDA strongly supports CMESC’s application to register as a clearing agency. The proposed framework for clearing in the CMESC application would create a competitive U.S. Treasury clearing landscape that, in turn, would provide for a more resilient U.S. Treasury market.

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 77 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on ISDA’s website: www.isda.org. Follow us on [Twitter](#), [LinkedIn](#), [Facebook](#), and [YouTube](#).

² *CME Securities Clearing, Inc.; Notice of Filing of an Application for Registration as a Clearing Agency Under Section 17A of the Securities Exchange Act of 1934*, 90 FR 7713 (Jan. 15, 2025) [hereinafter the CMESC Application].

³ CMESC Application, *Exhibit E-3* [hereinafter the CMESC Rules or the Rules].

⁴ CMESC Application, *Exhibit E-4* [hereinafter the CMESC Procedures or the Procedures].

⁵ Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to U.S. Treasury Securities, Exchange Act Release No. 99149 (Dec. 13, 2023), 89 Fed. Reg. 2,714 (Jan. 16, 2024) [hereinafter Treasury Clearing Rules].

As described in more detail below, in order for the market to realize the benefit of CMESC's proposed framework, CMESC should amend and clarify certain Rules and Procedures to ensure favorable regulatory capital treatment for prudentially regulated Members that clear for Users. CMESC should also consider changes to certain Rules that, as drafted, would limit Members' ability to effectively manage credit and operational risk associated with clearing for Users.

I. CMESC Should Amend its Rules and Procedures to Provide Members with Full Discretion to Close Out User Positions in the Event of a User Default in order to Facilitate Netting for Regulatory Capital Purposes

(a) Member's Authority to Trigger Close Out of User Positions in the Event of a User Default Under User's Clearing Agreement with Member

CMESC should amend its Rules and Procedures governing the User default process to explicitly provide Members with the authority and full discretion to trigger the closeout of a User's positions upon an event of default or termination event under the User's bilateral clearing agreement with the Member pursuant to which the Member acts as the User's authorizing Member.

A Member's right to accelerate, terminate and close-out, on a net basis, all transactions of its Users is critical for the treatment of the relevant client clearing agreement as a qualifying master netting agreement ("QMNA") under U.S. bank capital regulations. If prudentially regulated Members do not explicitly have this right, or the right within their client clearing agreement is not enforceable because CMESC's Rules and Procedures do not include a process for Member closeout of a User's positions, it will negatively impact Members' regulatory capital treatment and may limit or even prevent Members from acting on behalf of Users.

Moreover, should Members have any credit concerns with respect to an authorized User, the Member must be able to trigger the closeout of the User's positions without having to wait for consent by CMESC. For example, if a Member has posted its own funds to meet a margin call on behalf of a Supported User, and following the Member's corresponding call upon the User for that margin, the Supported User fails to provide the required margin to the Member, prudent risk management may dictate that the Member be able to trigger the closeout of the User's positions or take other risk mitigating actions. Under the Rules and Procedures, in this scenario, and other scenarios that may be considered a User default under the relevant client clearing agreement, Members would have to request CMESC to close out the User's outstanding positions and it would be within CMESC's discretion to grant (or decline to grant) the request. Failure to provide Members with the discretion to swiftly manage the positions of an authorized User in default would only create more risk in the clearing system and runs counter to the objective of enhancing the resiliency of U.S. Treasury markets.

In addition, the authority to close out User positions is consistent with the approach of derivative clearing organizations ("DCOs") and FICC in their clearing rulebooks. When a client event of default or termination event occurs under its clearing agreement with a futures commission

merchant (“FCM”) or its clearing agreement with a FICC sponsoring member, DCOs and FICC permit the FCM and sponsoring member to trigger the closeout of the client’s positions.⁶ We encourage CMESC to adopt a consistent approach.

(b) Turnover of Excess Margin and Settlement Amounts

While the Rules specifically require Members and Users to grant CMESC a first priority and unencumbered security interest and lien against any property, cash, securities, or collateral deposited with, held by, pledged to, or available to CMESC,⁷ the Rules are silent on whether a User may grant a Member a security interest in any excess margin or proceeds of a settlement in the event of a User default. CMESC should explicitly clarify in its Rules that Users may provide Members a security interest, secondary to CMESC’s security interest, in the margin amounts posted to CMESC, as well as a security interest in the User’s rights in the cleared transactions. Such rights will ensure that a Member can include these margin amounts when calculating regulatory capital for its guaranty of a User’s cleared transactions with CMESC. Moreover, the security interest in the cleared transactions will allow for netting between cleared transactions and bilateral repurchase transactions or other transactions between the User and Member.

To facilitate the Member’s secondary security interest, Members should be permitted to enter into an account control agreement with CMESC to perfect its security interest in collateral to be applied to the User’s obligations in the event of a User default. Further, the CMESC Rules should allow for turnover of any excess margin or settlement proceeds to the relevant Member upon liquidation of the User’s cleared transactions. With respect to any such excess margin amounts, CMESC should only have the authority to limit the withdrawal of excess margin if it ceases to act for, or suspends, the User or Member, and CMESC determines the limitation is necessary for the protection of CMESC, its Members, its Users or the general public.

⁶ See, e.g., <https://www.cmegroup.com/content/dam/cmegroup/rulebook/CME/I/9/9.pdf>. In the event of a client default, LCH Limited permits an FCM clearing member to request the transfer of client swaps to its proprietary account. See LCH Limited FCM Regulation 13(d); LCH Limited FCM Procedure 2.1.14(a).

See also, ISDA Letter to the SEC Re SEC “Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, To Modify the GSD Rules To Facilitate Access to Clearance and Settlement Services of All Eligible Secondary Market Transactions in U.S. Treasury Securities” [Release No. 34-99817; File No. SR-FICC-2024-005]; “Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the GSD Rules (i) Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transactions and That for Indirect Participant Transactions, and (ii) To Address the Conditions of Note H to Rule 15c3-3a” [Release No. 34-99844; File No. SR-FICC-20240007]; and “Notice of Filing and Extension of Review Period of Advance Notice To Modify the GSD Rules (i) Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transactions and That for Indirect Participant Transactions, and (ii) To Address the Conditions of Note H to Rule 15c3-3a” [Release No. 34-99845; File No. SR-FICC-2024-802] (April 17, 2024), available at <https://www.isda.org/a/JB1gE/ISDA-Comment-Letter-on-FICC-Rules-041724.pdf> (“**ISDA FICC Comment Letter April 2024**”).

⁷ CMESC Rule 501.

(c) Notice of Termination for User Authorization

CMESC should also amend its Rules to allow for immediate termination of a User's authorization, as the current 10-business day notice requirement may disincentivize Members from authorizing Users.⁸ Importantly, the requirement may impact the Member's ability to net its exposure to the User for regulatory capital purposes. Further, if a Member is seeking to terminate a User's authorization, the 10-business day notice period would require the Member to incur undue risk because the Member would remain responsible for meeting the obligations of the User in the event the User defaults on any Eligible Secondary Market Transaction submitted by the User prior to such termination.

II. CMESC Should Clarify the Procedures Governing an Independent User's Failure to Post Required Margin or Settle

CMESC should clarify the procedures it would follow if an Independent User fails to satisfy its margin requirements, and in particular, explicitly clarify that CMESC will provide a Member with immediate notification of an Independent User's failure to post margin. Independent Users post margin directly with CMESC for their own respective accounts,⁹ but Members authorizing such Independent Users need immediate notification of an Independent User's failure to post adequate margin because authorizing Members are ultimately responsible for guaranteeing the Independent User's performance.

Each business day, CMESC will perform two clearing cycles—an end-of-day cycle and an intraday cycle. Failure to meet either of two margin calls throughout the day may trigger a User default for which the Member is liable. Moreover, as discussed above, it is vital for authorizing Member(s) of Independent Users to have the ability to swiftly close out, liquidate or transfer User positions in the event of a User's failure to post margin or in a default scenario.

In addition, CMESC should similarly clarify in its procedures that it will promptly notify a Member if any of its authorized Users fail to meet their settlement obligations. Members guarantee their authorized Users and any delay or failure to communicate a User's failure to settle will prevent a Member from taking necessary action to mitigate such failure.

III. CMESC Should Provide Additional Clarity in its Rules and Procedures Governing Member and User Account Treatment

The CMESC Rules and Procedures governing the treatment of Member, Independent User and Supported User accounts would benefit from additional clarification.

The CMESC Rules and Procedures are mostly clear that CMESC intends to maintain separate recordkeeping accounts for Supported and Independent Users, and that CMESC will also maintain customer funds and securities separately within its books and records. ISDA understands that CMESC will establish separate omnibus accounts at its bank(s) for holding of

⁸ CMESC Rule 311.

⁹ CMESC Procedure 5-1.

initial margin and for receiving and making payments.¹⁰ For each Member that authorizes one or more Supported Users, within its books and records, CMESC will hold Supported User margin and Member-funded Supported User margin in the relevant Supported User account and will use the assets exclusively to clear, settle, novate and margin positions of the Supported User.¹¹ However, it would be helpful for CMESC's Rules to more expressly state that customer funds and securities will be kept entirely segregated, in separate accounts, from the Member's assets and not commingled.

CMESC should also record Member-funded margin for Supported Users separate from that provided by the Supported User and not treat the former as property of the Supported User. Members need to know that any margin they provided for a Supported User will not be inadvertently delivered back to the Supported User and that the Supported User's estate will not have a claim to any excess margin provided by the Member.

Further, the CMESC Rules and Procedures do not provide sufficient clarity on how Independent User customer funds will be treated if the Independent User is sponsored by multiple members. In this case, CMESC should explicitly clarify in its Rules how CMESC will allocate margin provided by an Independent User among transactions it has entered into with various authorizing Members. We understand that CMESC intends to allocate margin to each authorizing Member separately, but the Rules should explicitly address this scenario.

IV. Other Technical Adjustments to CMESC's Rules and Procedures

(a) Form of Initial Margin

CMESC requires that Members and Users satisfy initial margin requirements in cash, unless otherwise approved by CMESC.¹² While the CMESC Rules ultimately allow the provision of eligible collateral other than cash to satisfy a Member's or User's margin requirements, use of such eligible collateral should not require approval.

(b) Due Diligence and Risk Monitoring of Authorized Users

CMESC should narrow the due diligence and risk monitoring requirements for Members with respect to their authorized Users so that Members do not need to go beyond their normal policies and procedures for monitoring Users. As proposed, the CMESC Rules would require a Member to "monitor the risks associated with its authorized Users clearing Eligible Securities Transactions" through CMESC.¹³ Given that CMESC will allow Supported and Independent Users to be authorized by one or more Member, the Member's risk monitoring requirements with respect to its authorized Users should be narrowed to the specific transactions the Member authorizes. Requiring a Member to conduct risk monitoring or due diligence with respect to

¹⁰ CMESC Rule 507.

¹¹ CMESC Rule 513(b).

¹² CMESC Rule 502(b).

¹³ CMESC Rule 306(c)(iii).

activities conducted outside of the scope of its relationship with an individual User would be extremely burdensome, difficult to implement and create additional liability that would serve as a significant disincentive for a Member to authorize a User that is also authorized by another Member.

(c) Option to Settle User Positions Upon Member Default

CMESC should revise its Rules and Procedures that govern the default management process for Users and Members¹⁴ in a manner that explicitly provides CMESC with the option to settle trades with a User upon default of the authorizing Member. Currently, the Rules provide that CMESC will work with its non-defaulting Members to attempt to transfer the accounts of a User authorized by a defaulting Member, as soon as practicable, or liquidate any open positions of User accounts.¹⁵

(d) Form of Guaranty Fund Contributions and Substitution

CMESC's Rules require a Member that is, or has an affiliate that is, a U.S. Government Securities Broker-Dealer to substitute within sixty (60) minutes of a CMESC substitution instruction, cash for U.S. Treasury securities held as part of their required Guaranty Fund contribution.¹⁶ Upon any failure to provide cash within the specified deadline, CMESC may debit cash from the Member's bank account in the amount of the Member's non-U.S. Dollar cash Guaranty Fund Contribution then on deposit with CMESC. Requiring Members to substitute cash for U.S. Treasury securities in such a short timeframe can create disproportionate market risk to the Members. Moreover, the Rules do not specify any process or procedure governing how CMESC will select Members to substitute their U.S. Treasury securities for cash. Absent any procedures governing the substitution process, Members cannot anticipate when CMESC will exercise their cash substitution right, impacting the Member's ability to effectively manage the necessary liquidity. CMESC should remove this requirement or, at a minimum, put significant guardrails in place to allow Members to accurately anticipate and manage any cash substitution call.

(e) CMESC's Ability to Extend or Accelerate Transactions

Under the proposed Rules, in addition to the Capped Liquidity Facility ("CLF") under which each Member must enter into a standby repo arrangement with CMESC, upon the default of a Member (or potentially a User), CMESC can require non-defaulting Members and non-defaulting Users to enter into offsetting repo transactions that have the effect of extending outstanding settlement obligations for their repo or cash U.S. Treasury transactions. Additionally, CMESC can exercise its acceleration rights with respect to non-defaulting Members and non-defaulting Users such that their delivery obligations under outstanding repo

¹⁴ CMESC Rule 1507 and CMESC Procedure 4-4.

¹⁵ CMESC Procedure 4-4.

¹⁶ CMESC Rule 403(b).

transactions with a defaulting Member or defaulting User become due on dates earlier than the original maturity dates of such transactions.

Market participants execute repo transactions based on legally enforceable expectations regarding their maturity, but a potential extension or acceleration would introduce less certainty than exists for non-cleared repo transactions. Additionally, PFMI 8 on settlement finality requires a clearing agency to provide clear and certain final settlement, at least by the end of the value date.¹⁷ Accordingly, clearing agencies generally do not have the right to change the contractual end date for cleared contracts as CMESC does under these Rules. Finally, Members and Users would need to consider the accounting and capital implications of CMESC's ability to modify settlement dates.

In addition to the foregoing issues, CMESC does not provide any clarity regarding when it would use these mechanisms as opposed to the CLF, further increasing uncertainty and impeding Members' liquidity management.

(f) Member Withdrawal Period

CMESC Rules provide that a Member may voluntarily withdraw from membership by providing 10 business days' notice to CMESC. The Rules also specify that that amounts due by the Member before the withdrawal related to contribution to the Guaranty Fund or Default Assessment continue to be payable, and amounts of Guaranty Fund contribution or Default Assessment can continue to be claimed from the Member (up to its specified maximum amount) during and after the notice period, until the withdrawal becomes effective.¹⁸ This is problematic because CMESC could potentially resize its Guaranty Fund while a withdrawing Member is still a Member resulting in potential Guaranty Fund liability that cannot be quantified by the Member on an ex ante basis – in other words, creating an “uncapped” Guaranty Fund liability.

V. The Trade Submission Requirement Should Allow for Flexibility and Support a Competitive Clearing Landscape

CMESC should consider amending its trade submission requirement¹⁹ to clarify that a Member clearing an eligible secondary market transaction that is rejected from clearing for operational or clerical errors is not required to clear that transaction at another clearing agency if it is not a member at another clearing agency. Similarly, a Member of CMESC that enters an Eligible Secondary Market Transaction that CMESC does not clear should not have to become a member of another clearing agency that does clear that particular transaction.

¹⁷ See CPMI-IOSCO *Principles for financial market infrastructures* (April 2012), available at <https://www.bis.org/cpmi/publ/d101a.pdf>.

¹⁸ Rule 903.

¹⁹ Rule 202.

To avoid confusion, CMESC and the Commission should work together to explicitly clarify that, in general, the Commission's trade submission rule does not impose an obligation on U.S. Treasury clearing agencies to require direct participants to become members of a different clearing agency in order to ensure they have the ability to clear the full scope of Eligible Secondary Market Transactions offered by all U.S. Treasury clearing agencies. Absent such a clarification, market participants would have to ensure that they have access to every clearing agency that is authorized by the SEC, significantly increasing the cost of compliance without commensurate risk mitigation or benefit to the U.S. Treasury market.

In addition, there should be procedural safeguards around CMESC's (or any clearing agency's) ability to clear new products. Specifically, the SEC should make clear that any trade submission requirement for new types of Eligible Secondary Market Transactions will be subject to procedural protections, including notice by the clearing agency, public comment and delayed effectiveness.²⁰ Absent such procedural safeguards, the SEC's mandate will leave market participants without time to build their operational systems, undergo necessary internal analysis and enter into necessary documentation.

VI. Conclusion

We appreciate the opportunity to submit comments in response to the CMESC application. ISDA's core mission is to ensure the safety and efficiency of the derivatives markets but inefficiencies in the U.S. Treasury market could adversely affect collateral for derivatives and linked derivatives markets. To this end, ISDA has a strong interest in the development of a competitive U.S. Treasury clearing landscape which, in turn, would enhance the resiliency of U.S. Treasury markets. We therefore strongly support CMESC's application and hope that the CMESC and the Commission will consider our comments, as they reflect the extensive knowledge and experience of financial market professionals within our membership.

We look forward to further engaging the CMESC and the Commission on these important issues. Please do not hesitate to contact Ann Battle, Senior Counsel (abattle@isda.org), or Nicolette Cone, Associate General Counsel (ncone@isda.org) should you have any questions.



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²⁰ ISDA provided these comments to FICC's Trade Submission Requirement Proposal, which has since been withdrawn. See <https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/ficc> (indicating the SEC has withdrawn the FICC proposal, SR-FICC-2024-009).