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SEC Expands, Clarifies, and Standardizes Clearing Agency Rule

On April 9, 2020, the SEC adopted a final rule ("[Final Rule](#)") that will amend rules for securities clearing agencies to subject all SEC-registered central counterparties ("CCPs") and central securities depositories ("CSDs") to enhanced standards. The adopted rules will become effective sixty days after publication in the Federal Register. (As of the date of this post, the Final Rule had not been published). In a [press release](#), Brett Redfearn, Director of the Division of Trading and Markets stated "[t]hese amendments both enhance and clarify the definition of a covered clearing agency, which is an important step in the regulation of the U.S. financial system's critical market infrastructure."

Background

In 2012, the SEC finalized [Rule 17Ad-22](#) under the Securities Exchange Act of 1934 (the "Act"), which set regulatory standards for registered clearing agencies. In 2016, the SEC supplemented these standards by establishing requirements for registered clearing agencies that meet the definition of a "covered clearing agency" in Rule 17Ad-22(e). The Final Rule clarifies and expands definitions of "covered clearing agency" (Rule 17Ad-22(a)(5)), "central securities depository services" (Rule 17Ad-22(a)(3)), and "sensitivity analysis" (Rule 17Ad-22(a)(16)).

Amendments to Rule 17Ad-22

See the chart below for a comparison of the definitions:

| Defined Term | Old Definition | New Definition |
|--------------------------------------|---|---|
| Covered clearing agency | Covered clearing agency means a designated clearing agency or a clearing agency involved in activities with a more complex risk profile for which the Commodity Futures Trading Commission is not the Supervisory Agency as defined in Section 803(8) of the Payment, Clearing, and Settlement Supervision Act of 2010. | A registered clearing agency that provides the services of a CCP or CSD. |
| Central securities depository | Central securities depository services means services of a clearing agency that is a securities depository as described in Section 3(a)(23)(A) of the Act. | Central securities depository means a clearing agency that is a securities depository as described in Section 3(a)(23)(A) of the Act. |

Sensitivity analysis

Sensitivity analysis means an analysis that involves analyzing the sensitivity of a model to its assumptions, parameters, and inputs that: (i) Considers the impact on the model of both moderate and extreme changes in a wide range of inputs, parameters, and assumptions, including correlations of price movements or returns if relevant, which reflect a variety of historical and hypothetical market conditions. Sensitivity analysis must use actual portfolios and, where applicable, hypothetical portfolios that reflect the characteristics of proprietary positions and customer positions; (ii) When performed by or on behalf of a covered clearing agency involved in activities with a more complex risk profile, considers the most volatile relevant periods, where practical, that have been experienced by the markets served by the clearing agency; and (iii) Tests the sensitivity of the model to stressed market conditions, including the market conditions that may ensue after the default of a member and other extreme but plausible conditions as defined in a covered clearing agency's risk policies.

Sensitivity analysis means an analysis that involves analyzing the sensitivity of a model to its assumptions, parameters, and inputs that: (i) Considers the impact on the model of both moderate and extreme changes in a wide range of inputs, parameters, and assumptions, including correlations of price movements or returns if relevant, which reflect a variety of historical and hypothetical market conditions; (ii) Uses actual portfolios and, where applicable, hypothetical portfolios that reflect the characteristics of proprietary positions and customer positions; (iii) Considers the most volatile relevant periods, where practical, that have been experienced by the markets served by the clearing agency; and (iv) Tests the sensitivity of the model to stressed market conditions, including the market conditions that may ensue after the default of a member and other extreme but plausible conditions as defined in a covered clearing agency's risk policies.

Impact of the Final Rule

The SEC explained in the introduction to the Final Rule that the amended definition of "covered clearing agency" was more precise than the previous definition as it is "simpler and more accessible, consolidating all of the relevant concepts and factors into one definition in Rule 17Ad-22 and requiring a less subjective analysis to determine whether a clearing agency is subject to the requirements." In making these changes, the Final Rule expands its coverage to all registered clearing agencies providing the services of a CCP or CSD, which imposes compliance obligations including the following:

- All SEC-registered CCPs and CSDs (that do not already meet the existing definition of "covered clearing agency") will (i) become subject to examinations for compliance with Rule 17Ad-22(e) and, (ii) when filing proposed rule changes, will need to consider how those changes are consistent with Rule 17Ad-22(e).
- Entities seeking to register as a clearing agency that provide CCP or CSD services, as of the effective date, would also be subject to Rule 17Ad-22(e).
- A covered clearing agency that provides CCP services must establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review, test, and verify its risk-based margin system by conducting a sensitivity analysis of its margin model.

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