

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68121; File No. SR-CME-2012-26)

October 29, 2012

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing of Proposed Rule Change to Amend Rules in Connection with Status as a “Deemed Registered” Clearing Agency

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 15, 2012, Chicago Mercantile Exchange Inc. (“CME”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III, below, which Items have been prepared primarily by CME. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

CME is proposing to amend certain rules in connection with its status as a “deemed registered” clearing agency for purposes of clearing security-based swap products. The proposed changes are designed to comply with certain requirements in the Act. The text of the proposed changes is available on the CME’s website at <http://www.cmegroup.com>, at the principal office of CME, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV

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<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 240.19b-4.

below. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>3</sup>

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

*Background – CME's Credit Default Swap Business and "Deemed Registered" Status*

CME began clearing credit default swaps prior to the passage of the Dodd-Frank Act. These activities were facilitated by temporary exemptive relief granted by the Commission to CME. This temporary exemptive relief expired on July 16, 2011. At that time, certain provisions in the Dodd-Frank Act became effective that were intended to ensure that derivatives clearing organizations such as CME that were clearing credit default swaps prior to the passage of Dodd-Frank based on exemptions granted by the Commission could continue to do so without interruption. These provisions provided that CME became "deemed registered" as a clearing agency solely for the limited purpose of clearing security-based swaps. Commission staff has interpreted this Dodd-Frank "deemed registered" provision to mean that CME Inc., the legal entity that houses all of CME's futures and swap businesses, is generally subject to all of the requirements of the Act that apply to clearing agencies, including the obligation to submit rule filings of CME Inc. under SEC Rule 19b-4.

To-date, CME has not offered any products for clearing that fall under the Commission's jurisdiction since the passage of the Dodd-Frank Act.<sup>4</sup> CME has made over sixty rule filings under Rule 19b-4 since Dodd-Frank became effective, certain of which relate to CME's current

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<sup>3</sup> The Commission has modified the text of the summaries prepared by CME.

<sup>4</sup> CME currently offers clearing for certain credit default swap index products based on broad based indices that are under the exclusive jurisdiction of the Commodity Futures Trading Commission. More specifically, CME currently clears Markit CDX North American Investment Grade Index Series 8, 9, 10, 11, 12, 13, 14, 15, 17, 18 and 19 and for Markit CDX North American High Yield Index Series 11, 12, 13, 14, 15, 16, 17, 18 and 19.

broad-based credit default swap clearing business. CME is currently seeking approval from the Commission to offer single name credit default swaps for clearing; however, to date, CME has not received approval to do so.

*Summary of Proposed Rule Changes*

Commission staff has reviewed CME's rulebook and requested that CME make certain changes in accordance with existing Commission interpretive guidance.<sup>5</sup> The changes that are included in this filing are intended to address these requests. The proposed rule changes are found within Chapter 8H of the CME rulebook. The changes can be summarized as follows:

Changes to Rule 8H04: The changes to Rule 8H04, which sets forth CDS Clearing Member obligations and qualifications, are intended to address Section 17A(b)(3)(B) of the Exchange Act. The proposed changes explain that CME may approve an application for CDS Clearing Membership to permit the clearing of security-based swaps submitted by any corporation, partnership, limited liability company, or any other type of entity, provided that it determines such applicant satisfies applicable requirements and that applicants within one of the enumerated categories of participants in Section 17A(b)(3)(B) of the Securities Act of 1934 are specifically eligible to become CDS Clearing Members for the purpose of clearing security-based swaps. Further, separate revisions to Rule 8H04 are proposed that would make clear that CME may deny an application for CDS clearing membership to any person subject to a statutory disqualification as such term is defined by the Act

Change to 8H07 and 8H802.B: The proposed changes to Rule 8H07, which governs CDS financial safeguards and guaranty fund deposit matters, would require CME to notify clearing members regarding both the amount of and reasons for any charges to the guaranty fund

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<sup>5</sup> See Regulation of Clearing Agencies, Exchange Act Release No. 16900 (Jun. 17, 1980).

for any reason other than to satisfy a clearing loss attributable to a clearing member solely from that clearing member's guaranty fund deposit. Other proposed changes to Rule 8H802.B would specify that CME would provide notice to CDS Clearing Members as required by the Act regarding any amounts charged to the CDS Guaranty Fund due to losses incurred. Finally, proposed changes would also clarify that CME would apply Rule 8H07 on a uniform and non-discriminatory basis when determining minimum guaranty fund deposits.

Change to 8H930. One proposed change to Rule 8H930 highlights the fact that CME will apply Rule 8H930 on a uniform and non-discriminatory basis when determining performance bond requirements. Additional new language will also explain that (i) acceptable performance bond assets for security-based swaps and the applicable haircuts related to such assets will be set forth on a public website and that CME will have discretion to make adjustments to asset haircuts at any time; (ii) any such adjustment to the applicable asset haircut will be promptly communicated to CDS Clearing Members; (iii) any adjustments to the applicable asset haircut schedule for security based swap clearing activities must be based on an analysis of appropriate factors including, for example, historical and implied price volatilities, market composition, current and anticipated market conditions, and other relevant information; and (iv) the Clearing House will conduct regular reviews of its then-current haircut schedules and make any necessary adjustments.

New Rule 8H820. New rule 8H820 will specify that performance bond requirements will be as determined by CME staff from time to time and as set forth in Rule 820. With respect to performance bond requirements that apply to security-based swap clearing activities, CME will be required under Rule 8H20 to determine that each item that is enumerated as being acceptable

performance bond pursuant to CME Rule 820 has been determined to assure the safety and liquidity of the Clearing House as is required by Section 17A(b)(3)(F) of the Act.

New Rule 8H931. New Rule 8H931 would be added. This Rule would state that rules that relate to CME's activities as a clearing agency clearing security-based swaps will be adopted, altered, amended or repealed in accordance with the applicable requirements of Section 19(b) of the Act. Under the Rule, CME would promptly notify all CDS Clearing Members of any proposal it has made to change, revise, add or repeal any rule that relates to its activities as a securities clearing agency. Such notice would have to include the text or a brief description of any such proposed rule change, along with its purpose and effect, in accordance with the requirements of the Act. CDS Clearing Members would be required to submit comments with respect to any such proposal in accordance with the applicable SEC rules.

New Rule 8H932. New Rule 8H932 will require CME to maintain records of any disciplinary proceeding related to the activities of a CDS Clearing Member involving security-based swaps in accordance with the requirements of the Act and Rule 17a-1 thereunder.

New Rule 8H933. New Rule 8H933 would add rule language to Chapter 8H that would require CME to notify the Commission and any appropriate regulatory agency, as such term is defined by Section 3(a)(34) of the Act, regarding any final disciplinary sanction, denial of participation, prohibition or limitation with respect to access and/or summary suspension taken against a CDS Clearing Member relating to activities involving security-based swaps.

New Rule 8H934. New Rule 8H934 would obligate CME to, as soon as practicable after the end of each calendar year, make available financial statements audited by independent public accountants to all CDS Clearing Members engaged in security-based swap clearing activities. CME would also be required under this rule to make available to CDS Clearing Members

clearing security-based swaps a report by independent public accountants regarding CME Group's system of internal accounting control, describing any material weaknesses discovered and any corrective action taken or proposed to be taken.

The financial statements would, at a minimum include: (i) the balance of the clearing fund and the breakdown of the fund balance between the various forms of contributions to the fund, e.g., cash and secured open account indebtedness; (ii) the types and amounts of investments made with respect to the cash balance; (iii) the amounts charged to the clearing fund during the year in excess of a defaulting clearing member's Guaranty Fund contribution; and (iv) any other charges to the fund during the year not directly related and chargeable to a specific clearing member's Guaranty Fund contribution. CME also would make available to CDS Clearing Members clearing security-based swaps a report of CME Group Inc. by independent public accountant regarding its system of internal accounting control, describing any material weaknesses discovered and any corrective action taken or proposed to be taken.

CME would also furnish to all CDS Clearing Members engaged in security-based swap clearing activities, within 40 days following the close of each fiscal quarter, unaudited quarterly financial statements. These unaudited quarterly financial statements shall at a minimum consist of: (i) a statement of financial position as of the end of the most recent fiscal quarter and as of the end of the corresponding period of the preceding fiscal year; (ii) a statement of changes in financial position for the period between the end of the last fiscal year and the end of the most recent fiscal quarter and for the corresponding period of the preceding fiscal year; and (iii) a statement of results of operations, which may be condensed, for the most recent fiscal quarter and for the period between the end of the last fiscal year and the end of the most recent fiscal quarter and for the corresponding periods of the preceding fiscal year.

New Rule 8H935. New Rule 8H935 would limit CME's ability to invest the cash portion of the CDS Guaranty Fund and CDS Clearing Member performance bond contributions by only allowing investments in accordance with the requirements of CFTC Regulation 1.25, including U.S. Government obligations or such other investments as the rules of CME may provide which assure safety and liquidity. CME would also be required to limit its use of CDS Guaranty Fund and performance bond contributions related to security based swap activities to the purposes permitted by the Act under the proposed rule language.

New Rule 8H936. New Rule 8H935 would specify that CME would perform periodic risk assessments of CME's operations and its data processing systems and facilities, and provide CME's Board with such reports, and supervise the establishment, maintenance, and updating of operations and data processing safeguards while reporting periodically to the Board concerning strengths and weaknesses in CME's system of safeguards. In addition, the new Rule would make clear that CME was obligated to consider the impact that new or expanded service or volume increases would have on CME's processing capacity, both physical, including personnel, and systemic risk.

New Rule 8H938. Under new Rule 8H938, CME would only summarily suspend and close the accounts of a CDS Clearing Member engaged in security-based swap clearing activities that (i) has been and is expelled or suspended from any self-regulatory organization, (ii) is in default of any delivery of funds or securities to the clearing agency, or (iii) is in such financial operating difficulty that the clearing agency determines and so notifies the appropriate regulatory agency for the member that such suspension and closing of accounts are necessary for the protection of the clearing agency, its members, creditors, or investors.

*Fair Representation Requirement*

Commission staff has asked CME to provide an explanation of how CME's current governance arrangements relating to its CDS clearing offering should be viewed in light of the requirements of Section 17A(b)(3)(C) of the Act. This provision requires that the rules of a clearing agency assure a "fair representation" of its participants in the selection of its directors and administration of its affairs.

As an initial matter, CME notes that the Board of Directors of the CME Group Inc., the parent of CME, also serves as the Board of the CME. CME Group is a public company whose stock is listed on the Nasdaq Stock Market ("Nasdaq") and thus is subject to board composition requirements under Nasdaq listing standards. In addition, any member of the public is afforded the opportunity to purchase shares in the CME Group and influence the selection of directors and administration of its affairs on that basis, subject to applicable law.<sup>6</sup>

CME is also subject to governance and conflict of interest provisions under the core principles set out in the Commodity Exchange Act ("CEA") for a derivatives clearing organization ("DCO"). The CFTC reviews CME for compliance with these principles. For example, Section 5b(c)(2)(O) of the CEA sets out governance fitness standards that apply to DCOs, including transparent governance arrangements, that are designed to ensure the consideration of views of owners and participants. Further, Section 5b(c)(2)(Q) of the CEA requires a DCO's board to include market participants. CFTC regulations also require a DCO's governance arrangements to be clear and transparent and "to support the objectives of relevant stakeholders".

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<sup>6</sup> As noted in a 1980 SEC Release providing staff guidance regarding the requirements of Section 17A of the Act (Securities Exchange Act of 1934, Release No. 16900, June 17, 1980), the SEC may find "fair representation" with respect to clearing agency participants if such participants are afforded an opportunity to acquire voting stock of the clearing agency in proportion to their use of its facilities.

CME also believes it is relevant that CDS participants will have a meaningful input into decisions affecting the clearing operations for CDS through participation on the CME CDS Risk Committee. Under CME Rule 8H27, the CDS Risk Committee was formed to provide guidance and oversight to CME Clearing on matters relating to CDS Products. The CDS Risk Committee, among other things, is responsible for reviewing CDS financial safeguards, and CDS clearing member requirements, risk management policies and practices, review of CDS rule changes, etc.

The Charter of the CDS Risk Committee sets forth certain composition requirements that ensure the perspectives of CDS Clearing Members are represented. More specifically, the Charter requires that at all times the CDS Risk Committee is populated with up to nine and no fewer than five individuals who are representative of CDS Clearing Members. Because of these composition requirements of the CDS Risk Committee, and the scope of its responsibilities, CME believes the Commission could find that its current governance arrangements meet the requirements of the Act.

Further, CME also notes that the Charter of the CDS Risk Committee specifically provides that its Chairman shall be a member of the CME Inc. Board of Directors. In this capacity, the Chairman of the CDS Risk Committee serves as a liaison to the full board of directors of CME. He or she can relay any concerns addressed by the CDS Risk Committee to the full CME Board. CME notes that the CDS Risk Committee is required to reassess the adequacy of this Charter on an annual basis and submit any recommended changes to the full CME Board for approval. CME believes these features provide a concrete nexus between the activities of the CDS Risk Committee and the full CME Board and ensure that there will be a “fair representation” of CDS Clearing Members in accordance with the spirit and letter of the Act.

The CME believes the proposed rule changes are consistent with the requirements of the Act, including Section 17A of the Act. The changes are specifically designed to meet Section 17A requirements as interpreted by Commission staff for clearing agencies.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

CME has presented these proposed changes to the representatives of its CDS Risk Committee. CME has not otherwise solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CME-2012-42 on the subject line.

### Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CME-2012-26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME and on the CME's website at <http://www.cmegroup.com>.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CME-2012-26 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12)