



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

January 15, 2016

Mr. Sunil Cutinho
Senior Managing Director and President, CME Clearing
Chicago Mercantile Exchange Inc.
20 South Wacker Drive
Chicago, Illinois 60606

Re: No-Action Relief for Chicago Mercantile Exchange Inc. and its Credit Default Swap Clearing Members to Provide Clearing Services for Restructuring European Single Name Credit Default Swap Contracts

Dear Mr. Cutinho:

In your letter dated January 15, 2016, on behalf of the Chicago Mercantile Exchange Inc. ("CME"), you request assurances from the staff of the Division of Trading and Markets ("Staff") that it would not recommend enforcement action to the Securities and Exchange Commission ("Commission" or "SEC") under the specific legal provisions discussed below against CME and its credit default swap clearing members ("CDS Clearing Members") if CME and its CDS Clearing Members engage in the activities discussed in your letter. In particular, CME requests assurances that the Staff would not recommend enforcement action against:

- 1) CME under the registration requirements of Section 17A(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") in connection with the provision of clearance and settlement services to CDS Clearing Members and the customers of CDS Clearing Members for certain security-based swaps that are component transactions "spun out" (as described below) of iTraxx Contracts (as defined below) as a result of a Restructuring Credit Event (as defined below; such spun-out component transactions, the "Restructuring European Single Name CDS Contracts");
- 2) CME's CDS Clearing Members under Section 3C(a) of the Exchange Act by reason of clearing security-based swaps, either with respect to their proprietary positions or on behalf of customers, through an unregistered clearing agency if CME provides clearance and settlement services to CDS Clearing Members and their customers in respect of Restructuring European Single Name CDS Contracts (as described below), in the event that the Commission determines that the clearing requirement shall apply to Restructuring European Single Name CDS Contracts pursuant to Section 3C of the

Exchange Act;¹

- 3) CME under Sections 3E(b), 3E(d), and 3E(e) of the Exchange Act in connection with the commingling of Restructuring European Single Name CDS Contracts and broad-based index CDS contracts (“Index CDS”) that are customer positions and all associated money, securities, and property received to margin, secure or guarantee such customer positions in a segregated account established and maintained in accordance with Section 4d(f) of the Commodity Exchange Act (“CEA”) and the rules thereunder;
- 4) CME’s CDS Clearing Members that are registered with the Commission as broker-dealers and with the Commodity Futures Trading Commission (“CFTC”) as futures commission merchants (“BD/FCMs”), under Sections 3E(b), 3E(d), 3E(e), and 15(c)(3) of the Exchange Act, and Rule 15c3-3 thereunder, in connection with commingling Restructuring European Single Name CDS Contracts and Index CDS that are customer positions and all associated money, securities, and property received to margin, secure, or guarantee such customer positions in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and the rules thereunder; and
- 5) CME’s CDS Clearing Members that are BD/FCMs, under Exchange Act Rules 8c-1 and 15c2-1, if the CDS Clearing Members do not treat an affiliate (as defined in association with the definition of “Cleared Swaps Proprietary Account” under CEA Rule 22.1) as a customer in connection with commingling Restructuring European Single Name CDS Contracts and Index CDS that are customer positions and all associated money, securities, and property received to margin, secure or guarantee such customer positions in a Cleared Swaps Proprietary Account.

Based on your letter, we understand the facts to be as follows.

CME is a subsidiary of CME Group Inc. and is registered with the CFTC as a derivatives clearing organization (“DCO”). CME also was “deemed registered” with the Commission as a clearing agency for the sole purpose of clearing security-based swaps.² In its capacity as a DCO, CME provides clearing services for a large number of over-the-counter derivatives, which includes certain Index CDS administered by Markit Group Limited (“Markit”), to its CDS Clearing Members, and to customers of CDS Clearing Members that are registered with the CFTC as futures commission merchants (“FCMs”). In particular, CME provides clearing

¹ This position is not intended to provide relief that is different from that in Letter to Mr. Jean-Marie Boudet, Chief Risk Officer, LCH.Clearnet SA, from John Ramsay, Acting Director, Division of Trading and Markets, dated December 30, 2013, and Letter to Mr. Christophe Hemon, Chief Executive Officer, LCH.Clearnet SA, from Mr. James R. Burns, Deputy Director, Division of Trading and Markets, dated September 27, 2013.

² The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (“Dodd-Frank Act”) added Section 17A(J) to the Exchange Act, which provides, in relevant part, that certain DCOs registered with the CFTC that are required to register under Section 17A of the Exchange Act are “deemed registered” under Section 17A solely for the purpose of clearing security-based swaps.

services for CDS on Series 8 and all subsequent series of the Markit CDX North American Investment Grade Index and Series 13 and all subsequent series of the Markit CDX North American High Yield Index (collectively, the “CDX Contracts”). CME also provides clearing services for certain iTraxx Europe Index untranching CDS contracts (“iTraxx Contracts”).³ The iTraxx Contracts currently offered for clearing at CME include CDS on 1) the Markit iTraxx Europe Index at 3-, 5-, 7-, and 10-year maturities from Series 17 and all subsequent series, up to and including the current on-the-run Series and 2) the Markit iTraxx Europe Crossover Index at 5-year maturity for Series 17 and all subsequent series, up to and including the current on-the-run series. Both CDX Contracts and iTraxx Contracts are swaps subject to the CFTC’s jurisdiction. CME does not offer clearing services for single-name CDS, with the limited exception of clearing Restructuring European Single Name CDS Contracts, as defined below.

Consistent with market convention and widely used standard terms documentation, settlement of Index CDS can be triggered by “Credit Events,” which include failure to pay, bankruptcy, restructuring and, for transactions that will reference the 2014 Credit Derivatives Definitions (“2014 Definitions”) published by the International Swaps and Derivatives Association Inc. (“ISDA”), governmental intervention.⁴ CDS market participants, together with ISDA, have established industry-wide processes for the determination and settlement of Credit Events (the “Credit Event Management Process”). In general, determinations as to whether a Credit Event has occurred for a CDS contract are made by one of five regional Determinations Committees (each, a “DC”). A DC may make a determination that a Credit Event has occurred in respect of a reference entity in the DC’s region of responsibility. The market-standard form of settlement following the occurrence of a Credit Event is cash settlement by reference to an auction price, which is determined in an auction conducted pursuant to terms published by the relevant DC and reflects the price of certain deliverable obligations of the reference entity.⁵

In the case of bankruptcy and failure to pay Credit Events, once it has been determined that a Credit Event has occurred with respect to a reference entity, each CDS on such reference entity is automatically triggered and the Credit Event Management Process leading to settlement commences. In the case of a restructuring Credit Event (a “Restructuring Credit Event”), however, a determination by the relevant DC that a Restructuring Credit Event has occurred with respect to a reference entity does not automatically trigger settlement of CDS on such reference

³ See Exchange Act Release No. 74055 (Jan. 14, 2015), 80 FR 2991 (Jan. 21, 2015) (SR-CME-2015-001); CFTC Regulation 39.5(b) Submission: Acceptance of iTraxx for Clearing (CME Submission No. 14-491) (Nov. 21, 2014). Chapter 806 of the CME rulebook contains the rules governing clearing of iTraxx Contracts. <http://www.cmegroup.com/rulebook/CME/VII/806.pdf>. iTraxx Contracts reference European entities and are denominated in euros.

⁴ The term “Credit Event” is defined in Section 4.1 of the 2014 Definitions. Section 4.8 of the 2014 Definitions reflects the addition of “Governmental Intervention” as a new Credit Event. Governmental Intervention includes, among other things, certain actions taken by a governmental authority that negatively impact (i) the rights of the holders of its debt to receive interest or principal; (ii) the tenor of the debt; or (iii) the ranking such debt.

⁵ Article VI of the 2014 Definitions sets out the terms relating to auction settlement.

entity. Rather, the parties to the affected CDS are required to elect to trigger partial or whole settlement on a bilateral basis.

Following the occurrence of a Restructuring Credit Event with respect to a reference entity that is a component of an iTraxx Contract, the component transaction relating to the relevant reference entity is “spun out” from the iTraxx Contract⁶ and maintained in the CDS Clearing Member’s relevant proprietary or customer account as a “Restructuring European Single Name CDS Contract.”⁷ CME expects that CDS Clearing Members and their customers holding such contracts will elect to trigger settlement, rather than maintain the open positions in the Restructuring European Single Name CDS Contract. However, any Restructuring European Single Name CDS Contract for which settlement is not triggered will be maintained by CME until maturity of the index or the occurrence of a subsequent Credit Event with respect to the same reference entity.

CME rules do not permit market participants to increase, close out or otherwise affect the size of a position in a Restructuring European Single Name CDS Contract, other than due to the occurrence of a subsequent Credit Event, a close out of a defaulting customer’s positions, withdrawal by a CDS Clearing Member from CDS clearing membership in accordance with CME rules, or the operation of the default management process with respect to a defaulting CDS Clearing Member in accordance with CME rules.⁸ In particular, CME’s default management process would permit CME to, among other actions, hedge, liquidate, auction and/or transfer all or any portion of the portfolio of the defaulting CDS Clearing Member and its customers, if applicable, and to the extent permitted by law, transfer open customer positions in CDS contracts and associated performance bond collateral.

The clearing of Restructuring European Single Name CDS Contracts, which are security-based swaps, could implicate specified provisions of the Exchange Act for CME and its CDS Clearing Members that maintain customer and proprietary positions in Restructuring European

⁶ The “spin-out” process resulting in the creation of single-name CDS upon the occurrence of a Restructuring Credit Event is set out in Section 5.2 of the iTraxx Europe Untranch Standard Terms Supplement.

⁷ CME will match each seller with one or more buyers, each of which is a party to a Restructuring European Single Name CDS Contract of the same type (such Restructuring European Single Name CDS Contracts thereby becoming “Matched Contracts”), such that the floating rate payer calculation amount related to each seller under each Matched Contract is fully allocated to one or more buyers under Matched Contracts of the same type. Following the spin-out, the parties to the Matched Contracts may elect whether to trigger settlement of the Restructuring European Single Name CDS Contract.

⁸ See CME Rules 230, 8H10, 8H14, 8H26, 8H27, 8H802, 8H913, and 8H9751. A default could be declared if a CDS Clearing Member or its parent guarantor (i) fails to discharge any obligation to CME, or (ii) becomes subject to any bankruptcy, reorganization, insolvency or other similar proceeding under U.S. federal or state bankruptcy law, or other applicable law. See CME Rule 8H803.A.1.a.

Single Name CDS Contracts at CME. Specifically, the clearing of Restructuring European Single Name CDS Contracts at CME could subject CME to the clearing agency registration requirements of Section 17A(b)(1)⁹ of the Exchange Act. If such Restructuring European Single Name CDS Contracts are customer positions, CME and its CDS Clearing Members that are BD/FCMs also could be subject to Sections 3E(b), 3E(d), and 3E(e) of the Exchange Act, which set forth the framework for the segregation of assets held as collateral in a cleared security-based swap transaction.¹⁰ Additionally, the clearing of Restructuring European Single Name CDS Contracts that are customer positions could also implicate Section 15(c)(3)¹¹ of the Exchange Act and Rule 15c3-3¹² thereunder, which provide for the protection of customer securities and funds by requiring segregation of customer funds and fully paid and excess margin securities held by broker-dealers for the accounts of customers. Moreover, such CDS Clearing Members could also be subject to Exchange Act Rule 8c-1¹³ and 15c2-1,¹⁴ which prohibit, among other things, a broker-dealer from commingling customer securities (the term “customer” for this purpose generally includes affiliates of the broker-dealer) with its own proprietary securities under a lien for a loan made to such broker-dealer.

On August 3, 2015, CME submitted to the Commission, under Section 19(a)(3) of the Exchange Act,¹⁵ a request to withdraw from its clearing agency registration.¹⁶ On December 17, 2015, the Commission approved CME’s request to withdraw from clearing agency registration.¹⁷ Accordingly, CME is no longer a registered clearing agency. Absent no-action relief from the Staff, CME’s management of Credit Events for CDS Clearing Members and customers of CDS Clearing Members by creating, maintaining and commingling cleared positions in Restructuring European Single Name CDS Contracts and Index CDS could be viewed as inconsistent with Sections 17A(b)(1), 3E(b), 3E(d), and 3E(e) of the Exchange Act. Similarly, the clearing of Restructuring European Single Name CDS Contracts by CDS Clearing Members or the commingling of Restructuring European Single Name CDS Contracts and Index CDS by CME’s CDS Clearing Members that are BD/FCMs could implicate Sections 3C(a), 3E(b), 3E(d), 3E(e), and 15(c)(3) of the Exchange Act, as well as Rules 8c-1, 15c2-1 and 15c3-3 under the Exchange Act.

⁹ See 15 U.S.C. 78q-1(b)(1).

¹⁰ See 15 U.S.C. 78c-5(b), 15 U.S.C. 78c-5(d), and 15 U.S.C. 78c-5(e).

¹¹ 15 U.S.C. 78o(c)(3).

¹² 17 CFR 240.15c3-3.

¹³ 17 CFR 240.8c-1.

¹⁴ 17 CFR 240.15c2-1.

¹⁵ 15 U.S.C. 78s(a)(3).

¹⁶ See Exchange Act Release No. 75762 (Aug. 26, 2015), 80 FR 52815 (Sep. 1, 2015) (File No. 600-35).

¹⁷ See Exchange Act Release No. 76678 (Dec. 17, 2015), 80 FR 79983 (Dec. 23, 2015) (File No. 600-35).

Response:

Based on the facts and representations set forth in your letter, and without necessarily agreeing with your conclusions and analysis, Division staff will not recommend enforcement action to the Commission under Sections 17A(b)(1), 3C(a), 3E(b), 3E(d), 3E(e) and 15(c)(3) of the Exchange Act, and Rules 8c-1, 15c2-1 and 15c3-3 thereunder, against CME or CME's CDS Clearing Members if CME or its CDS Clearing Members engage in the proposed activities described above. This no-action position will expire in the event that CME becomes registered as a clearing agency with the Commission, upon the effectiveness of such registration.

In taking this position, we note in particular your representations that as a DCO registered with the CFTC, CME intends to offer clearing services for iTraxx Contracts and any resulting Restructuring European Single Name CDS Contracts for CDS Clearing Members and customers of its BD/FCM CDS Clearing Members, provided that:

- 1) In addition to the relief sought in this request, CME has obtained any other relief needed to permit such BD/FCM to maintain customer money, securities and property received to margin, guarantee, or secure customer Restructuring European Single Name CDS Contracts in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and CFTC rules thereunder;¹⁸
- 2) CME has rules and operational practices in place to permit such BD/FCM to maintain customer money, securities and property received to margin, guarantee, or secure customer positions in Restructuring European Single Name CDS Contracts in an account established and maintained in accordance with Section 4d(f) of the CEA and the CFTC rules thereunder;
- 3) Each customer whose money, securities or property is received by such BD/FCM to margin, guarantee, or secure the Restructuring European Single Name CDS Contracts is an "eligible contract participant" as defined in Section 1a(18) of the CEA;
- 4) Such BD/FCM will be at all times registered with the CFTC as an FCM and with the Commission as a broker-dealer;
- 5) Such BD/FCM must hold all money, securities or property received to margin, guarantee, or secure the Restructuring European Single Name CDS Contracts:
 - (i) of customers that are not affiliates in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and the CFTC

¹⁸ If such money, securities and property could not be held in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and the CFTC rules thereunder, it would be held in a segregated account established and maintained in accordance with Sections 3E and 15(c)(3) of the Exchange Act, as applicable, and the rules thereunder.

regulations thereunder; and

(ii) of customers that are affiliates in a Cleared Swaps Proprietary Account.¹⁹

Alternatively, all money, securities or property received to margin, guarantee, or secure the Restructuring European Single Name CDS Contracts of customers that are not affiliates will be held in a segregated account established and maintained in accordance with Sections 3E and 15(c)(3) of the Exchange Act, as applicable, and the rules thereunder;

- 6) Such BD/FCM will enter into a non-conforming subordination agreement with each customer that is not an affiliate whose money, securities or property is received by such BD/FCM to margin, guarantee, or secure positions in Restructuring European Single Name CDS Contracts held in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and the CFTC rules thereunder, and the agreement will contain a specific acknowledgment by the customer that such money, securities or property will not receive customer treatment under the Exchange Act or the Securities Investor Protection Act of 1970 ("SIPA") or be treated as customer property as defined in 11 U.S.C. 741 in a liquidation of the BD/FCM; as well as an affirmation by the customer that all of its claims with respect to such money, securities, or property against the BD/FCM will be subordinated to the claims of other securities customers and security-based swap customers;
- 7) Such BD/FCM will enter into a non-conforming subordination agreement with each affiliate whose money, securities or property is received by such BD/FCM to margin, guarantee, or secure positions in Restructuring European Single Name CDS Contracts held in a Cleared Swaps Proprietary Account, and the agreement will contain a specific acknowledgment by the affiliate that such money, securities or property will not receive customer treatment under the Exchange Act or SIPA or be treated as customer property as defined in 11 U.S.C. 741 in a liquidation of the BD/FCM and that such money, securities or property will be held in a proprietary account in accordance with CFTC requirements; as well as an affirmation by the affiliate that all of its claims with respect to such money, securities, or property against the BD/FCM will be subordinated to the claims of other securities customers and security-based swap customers;
- 8) With respect to customers that are affiliates of such BD/FCM, the BD/FCM will obtain from the affiliate an opinion of counsel that the affiliate is legally authorized to subordinate all of its claims against the BD/FCM to those of other customers;
- 9) As soon as practicable and in any event within one business day following the creation of

¹⁹ The term "Cleared Swaps Proprietary Account" is defined in Rule 22.1 under the CEA and includes an account for Cleared Swaps and associated collateral for persons with certain relationships with FCMs.

a Restructuring European Single Name CDS Contract, a BD/FCM will furnish to each customer that is not an affiliate of the BD/FCM a disclosure document containing the following information:

- (i) (a) a statement indicating that the customer's money, securities and property received by such BD/FCM to margin, guarantee, or secure positions in Restructuring European Single Name CDS Contracts will be held in an account maintained in accordance with the segregation requirements of Section 4d(f) of the CEA and a general description of the treatment of such money, securities and property in the event that the BD/FCM is subject to a bankruptcy proceeding or other similar proceeding; and
 - (b) a statement that the broker-dealer segregation requirements of Section 15(c)(3) and Section 3E of the Exchange Act and the rules thereunder, and the customer protections under SIPA and the stockbroker liquidation provisions, will not apply to such customer money, securities, and property; or
 - (ii) if the customer's money, securities and property received by such BD/FCM is being held in segregated accounts other than those maintained in accordance with Section 4d(f) of the CEA, a statement that such money, securities and property are being held in segregated accounts in accordance with the Exchange Act and the rules thereunder;
- 10) Under CME Rules, market participants are not permitted to increase, close out or otherwise affect the size of a position in Restructuring European Single Name CDS Contracts other than due to the occurrence of a Credit Event, a close out of a defaulting customer's positions, or withdrawal from CDS Clearing Membership in accordance with CME rules. CME may impose an increase or decrease in the position of a Restructuring European Single Name CDS Contract only through its default management process;
- 11) Absent relief from the Commission or Staff in addition to that provided in this letter, CDS Clearing Members may not clear, and CME will not accept for clearing, any security-based swaps, either for their proprietary or customer accounts, other than Restructuring European Single Name CDS Contracts.

Finally, CME will keep and preserve at least one copy of all documents (including but not limited to correspondence, memoranda, papers, books, notices, accounts and other records) made or received by it in connection with its iTraxx Contracts clearance and settlement services for its CDS Clearing Members and customers of its CDS Clearing Members and will provide such information on Restructuring European Single Name CDS Contracts as may be requested by the Commission or its staff.

This Staff position is based strictly on the facts and representations you have made in your letter, and any different facts or representations might require a different response. This position is subject to modification or revocation by the Staff at any time. Furthermore, this response expresses the Staff's position on enforcement action only and does not purport to

Mr. Sunil Cutinho
January 15, 2016
Page 9 of 9

express any legal conclusions on the questions presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules.

If you have any questions regarding this letter, please contact Gary Goldsholle, Deputy Director, at (202) 551-7739, Wenchi Hu, Associate Director, at (202) 551-6268, or me at (202) 551-5500.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Luparello', with a stylized flourish at the end.

Stephen Luparello
Director

January 15, 2016

By Electronic Mail

Mr. Stephen Luparello
Director, Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Request for No-Action Relief from Clearing Agency Registration Requirements and Other Provisions of the Exchange Act

Dear Mr. Luparello:

Chicago Mercantile Exchange Inc. (“CME Inc.”) respectfully requests that the Division of Trading and Markets (the “Division”) of the U.S. Securities and Exchange Commission (the “Commission”) provide CME Inc. assurances that it will not recommend enforcement action to the Commission under the Securities Exchange Act of 1934 (the “Exchange Act”) if CME Inc. and certain of its credit default swap clearing members (“CDS Clearing Members”) engage in the limited clearing activities described in this letter with respect to specified single-name credit default swaps (“CDS”) that reference a component of a broad-based index that is “spun out” of that broad-based index CDS. The CDS at issue and the specific relief requested are described in detail below.

1. CME Inc.’s Regulatory Status

CME Inc. is a subsidiary of CME Group Inc., which operates the world’s leading and most diverse derivatives marketplace. CME Inc. is registered with the Commodity Futures Trading Commission (“CFTC”) as a designated contract market and as a derivatives clearing organization (“DCO”).¹ CME Inc. also was “deemed registered” with the Commission as a clearing agency for the sole purpose of clearing security-based swaps.²

¹ A “derivatives clearing organization,” as defined under Section 1a(15) of the Commodity Exchange Act (“CEA”), may clear swaps, as well as other types of financial instruments. 7 U.S.C. § 1a(15) (2015).

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (the “Dodd-Frank Act”) added Section 17A(l) to the Exchange Act. Section 17A(l) provides, in relevant part, that certain DCOs registered with the CFTC that are required to register under Section 17A of the Exchange Act are “deemed registered” under Section 17A solely for the purpose of clearing security-based swaps. The Commission has stated that CME Inc. is a Registered Clearing Agency (“RCA”) pursuant to this “deemed registered” provision for the purpose of clearing security-based swaps and, therefore, a dually-registered clearing agency.

On December 10, 2014, CME Inc. submitted to the Commission, under Section 19(a)(3) of the Exchange Act, a request to withdraw from its clearing agency registration. On December 17, 2015, the Commission issued an order granting CME Inc.'s withdrawal request.³ Because CME Inc. is no longer an RCA for the limited purpose of clearing security-based swaps, it needs relief to provide the limited clearing activities described in this letter with respect to specified single-name CDS.

2. CME Inc.'s Index CDS Clearing Business

In its capacity as a DCO, CME Inc. provides clearing services for a large number of over-the-counter derivatives, which include transactions involving swaps. CME Inc. currently offers clearing of certain broad-based index CDS ("Index CDS") administered by Markit Group Limited ("Markit")⁴ to its CDS Clearing Members and to customers of CDS Clearing Members, if such CDS Clearing Members are registered with the CFTC as futures commission merchants ("FCMs"). In particular, CME Inc. clears Markit CDX North American Investment Grade Index Series 8 and forward and Markit CDX North American High Yield Index Series 13 and forward (collectively, the "CDX Contracts"), and specified iTraxx Europe index untranching CDS contracts ("iTraxx Contracts"). iTraxx Contracts currently cleared are: (i) CDS on Markit iTraxx Europe Main 3Y: Series 17 and all subsequent Series, up to and including the current on-the-run Series; (ii) CDS on Markit iTraxx Europe Main 5Y: Series 17 and all subsequent Series, up to and including the current on-the-run Series; (iii) CDS on Markit iTraxx Europe Main 7Y: Series 17 and all subsequent Series, up to and including the current on-the-run Series; (iv) CDS on Markit iTraxx Europe Main 10Y: Series 17 and all subsequent Series, up to and including the current on-the-run Series; and (v) CDS on Markit iTraxx Europe Crossover 5Y: Series 17 and all subsequent Series, up to and including the current on-the-run Series. Both CDX Contracts and iTraxx Contracts are "swaps," as that term is defined below, subject to the CFTC's jurisdiction. CME Inc. does not offer clearing services for single-name CDS, with the limited exception of clearing Restructuring European Single Name CDS Contracts, as described below.

3. Credit Events in Respect of iTraxx Contracts

Consistent with market convention and widely used standard terms documentation, settlement of Index CDS can be triggered by "Credit Events," which include failure to pay, bankruptcy, restructuring and, in respect of transactions that will reference the 2014 Credit Derivatives Definitions ("2014 Definitions Transactions"), published by the International Swaps and Derivatives Association ("ISDA"), governmental intervention.⁵

³ Order Granting Chicago Mercantile Exchange Inc.'s Request to Withdraw from Registration as a Clearing Agency, Exchange Act Release No. 76678 (Dec. 17, 2015).

⁴ Markit describes itself as "a global index provider, with coverage that includes equities, fixed income and economics." <http://www.markit.com/Product/Indices>. Markit iTraxx indices are a family of European, Asian and Emerging Market tradable credit default swap indices. <http://www.markit.com/Product/ITraxx>.

⁵ The term "Credit Event" is defined in Section 4.1 of the 2014 ISDA Credit Derivatives Definitions (the "2014 Definitions"). Section 4.8 of the 2014 Definitions reflects the addition of "Governmental Intervention" as a new Credit Event. Governmental Intervention includes, among other things, certain actions taken by a governmental authority that negatively impact (i) the rights of the holders of its debt to receive interest or principal; (ii) the tenor of the debt; or (iii) the ranking such debt.

CDS market participants, together with ISDA, have established industry-wide processes for the determination and settlement of Credit Events (the “Credit Event Management Process”). In general, determinations as to whether a Credit Event has occurred in respect of a CDS contract are made by one of five regional Determinations Committees (each, a “DC”). A DC may make a determination that a Credit Event has occurred in respect of a reference entity in the DC’s region of responsibility. The market-standard form of settlement following the occurrence of a Credit Event is cash settlement by reference to an auction price.⁶ The auction price is determined in an auction conducted pursuant to terms published by the relevant DC and reflects the price of certain deliverable obligations of the reference entity.

For bankruptcy and failure to pay Credit Events, once it has been determined that a Credit Event has occurred in respect of a reference entity, each CDS on such reference entity is automatically triggered and the Credit Event Management Process leading to settlement commences. In respect of a restructuring Credit Event (a “Restructuring Credit Event”), however, a determination by the relevant DC that a Restructuring Credit Event has occurred with respect to a reference entity does not automatically trigger settlement of CDS on such reference entity. Rather, the parties to the affected CDS are required to elect to trigger partial or whole settlement on a bilateral basis.

Following the occurrence of a Restructuring Credit Event with respect to a reference entity that is a component of an iTraxx Contract, the component transaction relating to the relevant reference entity will be “spun out” from the iTraxx Contract and instead maintained in the CDS Clearing Member’s relevant proprietary or customer account as a “Restructuring European Single Name CDS Contract.” CME Inc. will match each seller with one or more buyers, each of which is a party to a Restructuring European Single Name CDS Contract of the same type (such Restructuring European Single Name CDS Contracts thereby becoming “Matched Contracts”), such that the floating rate payer calculation amount related to each seller under each Matched Contract is fully allocated to one or more buyers under Matched Contracts of the same type.

Following the spin-out, the parties to the Matched Contracts may elect whether to trigger settlement of the Restructuring European Single Name CDS Contract. Any Restructuring European Single Name CDS Contract for which settlement is not triggered will be maintained by CME until maturity of the index or the occurrence of a subsequent Credit Event with respect to the same reference entity.⁷ CME Inc. rules do not permit market participants to increase, close out or otherwise affect the size of a position in a Restructuring European Single Name CDS Contract, other than due to the occurrence of a subsequent Credit Event, a close out of a defaulting customer’s positions, withdrawal by a CDS Clearing Member from CDS clearing membership in accordance with CME Inc. rules, or the operation of the default management process with respect to a defaulting CDS Clearing Member in accordance with CME Inc. rules.⁸ In particular, the CME Inc. default management process would

⁶ Article VI of the 2014 Definitions sets out the terms relating to auction settlement.

⁷ The “spin-out” process resulting in the creation of single-name CDS upon the occurrence of a Restructuring Credit Event is set out in Section 5.2 of the iTraxx Europe Untranchured Standard Terms Supplement. CME Inc. expects that CDS Clearing Members and their customers holding such contracts will elect to trigger settlement, rather than maintain the open positions in the Restructuring European Single Name CDS Contract.

⁸ See CME Rules 230, 8H10, 8H14, 8H26, 8H27, 8H802, 8H913, and 8H975I. A default could be declared if a CDS Clearing Member or its parent guarantor (i) fails to discharge any obligation to CME Inc., or (ii) becomes subject to any bankruptcy, reorganization, insolvency or other similar proceeding under U.S. federal or state bankruptcy law, or other applicable law. See CME Rule 8H803.A.1.a.

permit CME Inc. to, among other actions, hedge, liquidate, auction and/or transfer all or any portion of the portfolio of the defaulting CDS Clearing Member and its customers, if applicable, and to the extent permitted by law, transfer open customer positions in CDS contracts and associated performance bond collateral.

4. Legal Analysis

Clearing Restructuring European Single Name CDS Contracts could implicate specified provisions of the Exchange Act for CME Inc. and its CDS Clearing Members that maintain customer and proprietary positions in Restructuring European Single Name CDS Contracts at CME Inc. CDS on a broad-based index of reference entities, such as the iTraxx Contracts cleared by CME Inc., are “swaps” (“Swaps” and each, a “Swap”) for purposes of Title VII of the Dodd-Frank Act and the CEA.⁹ By contrast, CDS on a single underlying reference entity, such as Restructuring European Single Name CDS Contracts, or on a narrow-based index of reference entities, are security-based swaps (“Security-Based Swaps” and each, a “Security-Based Swap”) for purposes of Title VII of the Dodd-Frank Act and the Exchange Act.¹⁰ Section 3(a)(10) of the Exchange Act, moreover, includes Security-Based Swap within the definition of “security.”¹¹ The Dodd Frank Act gives regulatory authority over Swaps to the CFTC and over Security-Based Swaps to the Commission.

(i) Clearing Agency Registration

The clearing agency registration requirements of Section 17A of the Exchange Act, as well as the rules promulgated under that section, could be viewed as applying to CME Inc. if CME Inc. provides clearance and settlement services with respect to Restructuring European Single Name CDS Contracts. Section 17A(b)(1) of the Exchange Act¹² provides that “it shall be unlawful for any clearing agency, unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security).” Thus, the provision of clearance and settlement services for Restructuring European Single Name CDS Contracts, which would be securities within the meaning of the Exchange Act, would subject CME Inc. to the clearing agency registration requirements of Section 17A(b)(1) of the Exchange Act.

(ii) Segregation and Protection of Customer Assets

In addition, the provision by CME Inc. of clearance and settlement services with respect to Restructuring European Single Name CDS Contracts may implicate certain Exchange Act provisions relating to segregation and protection of customer assets for CDS Clearing Members that clear iTraxx Contracts on behalf of customers through CME Inc. In particular:

- Section 3E of the Exchange Act sets out the framework for the segregation of assets held as

⁹ See 7 U.S.C. § 1a(47)(iii)(XV) (defining a Swap to include “any agreement, contract, or transaction commonly known as ... a credit default swap”).

¹⁰ See 15 U.S.C. § 78(c)(68) (2015). See also Further Definition of Swap, Security-Based Swap and Security-Based Swap Agreement; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208 (Aug. 13, 2012).

¹¹ 15 U.S.C. § 78c(a)(10).

¹² 15 U.S.C. § 78q-1(b).

collateral in Security-Based Swap transactions.¹³

- Section 3E(b)(1) of the Exchange Act provides that a broker, dealer, or Security-Based Swap dealer shall treat and deal with all money, securities, and property of any Security-Based Swap customer received to margin, guarantee, or secure a cleared Security-Based Swap transaction as belonging to the customer.¹⁴
- Section 3E(b)(2) of the Exchange Act provides that the money, securities, and property shall be separately accounted for and shall not be commingled with the funds of the broker, dealer, or Security-Based Swap dealer or used to margin, secure, or guarantee any trades or contracts of any Security-Based Swap customer or person other than the person for whom the money, securities, or property are held.¹⁵
- Section 3E(d) of the Exchange Act permits money subject to segregation under Section 3E(b) of the Exchange Act to be invested in certain obligations of the United States, obligations guaranteed as to principal and interest by the United States, obligations of states and municipalities, and such other investments as the Commission may prescribe by rule or regulation.¹⁶
- Section 3E(e) of the Exchange Act places certain prohibitions on the disposition and use of customer money, securities, and property of a Security-Based Swap customer by any person, including any clearing agency and any depository institution that has received any money, securities, or property for deposit in a separate account or accounts, as provided in Section 3E(b) of the Exchange Act.¹⁷
- Section 15(c)(3) of the Exchange Act¹⁸ and Rule 15c3-3 under the Exchange Act¹⁹ also provide for the protection of customer securities and funds. Unless an exemption or other relief is granted, a broker-dealer would be required to comply with applicable provisions of Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder as they relate to all securities, including Security-Based Swaps.
- Rules 8c-1 and 15c2-1 (“hypothecation rules”) under the Exchange Act prohibit, among other things, a broker-dealer from commingling customer securities (the term “customer” for this purpose generally includes affiliates of the broker-dealer) with its proprietary securities under a lien for a loan made to such broker-dealer.²⁰ Unless an exemption or other relief is granted, affiliates of a broker-dealer that are not excluded from the definition of customer in Rules 8c-1 and 15c2-1 are customers whose securities positions cannot be commingled with the broker-dealer’s proprietary securities.

¹³ 15 U.S.C. § 78c-5.

¹⁴ 15 U.S.C. § 78c-5(b)(1).

¹⁵ 15 U.S.C. § 78c-5(b)(2).

¹⁶ 15 U.S.C. § 78c-5(d).

¹⁷ 15 U.S.C. § 78c-5(e).

¹⁸ 15 U.S.C. § 78o(c)(3).

¹⁹ 17 CFR 240.15c3-3.

²⁰ 17 CFR 240.8c-1 and 17 CFR 240.15c2-1.

Absent relief from the Division, CME Inc.'s management of Credit Events for CDS Clearing Members and customers of CDS Clearing Members by creating, maintaining and commingling cleared positions in Restructuring European Single Name CDS Contracts and Index CDS could be viewed as inconsistent with Sections 17A(b)(1), 3E(b), 3E(d), and 3E(e) of the Exchange Act. Similarly, commingling of Restructuring European Single Name CDS Contracts and Index CDS by CME Inc. CDS Clearing Members that are registered both with the Commission as broker-dealers and with the CFTC as FCMs (each, a "BD/FCM") could potentially violate Sections 3E(b), 3E(d), 3E(e) and 15(c)(3) of the Exchange Act, as well as Rules 8c-1, 15c2-1 and 15c3-3 under the Exchange Act.

5. Representations Relating to Transactions in iTraxx Contracts of Customers of CDS Clearing Members

CME Inc. permits CDS Clearing Members that are BD/FCMs to clear iTraxx Contracts for customers. If a BD/FCM that is a CDS Clearing Member holds Restructuring European Single Name CDS Contracts for or on behalf of customers and accepts any money, securities or property from, for, or on behalf of customers to margin, guarantee, or secure positions in Restructuring European Single Name CDS Contracts, CME Inc. represents as follows:

- (1) In addition to the relief sought in this request, CME Inc. has obtained any other relief needed to permit such BD/FCM to maintain customer money, securities and property received to margin, guarantee, or secure customer Restructuring European Single Name CDS Contracts in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and CFTC Rules thereunder;²¹
- (2) CME Inc. has rules and operational practices in place to permit such BD/FCM to maintain customer money, securities and property received to margin, guarantee, or secure customer positions in Restructuring European Single Name CDS Contracts in an account established and maintained in accordance with Section 4d(f) of the CEA and the CFTC Rules thereunder;
- (3) Each customer whose money, securities or property is received by such BD/FCM to margin, guarantee, or secure the Restructuring European Single Name CDS Contracts is an "eligible contract participant" as defined in Section 1a(18) of the CEA;
- (4) Such BD/FCM will be at all times registered with the CFTC as an FCM and with the Commission as a broker-dealer;
- (5) Such BD/FCM must hold all money, securities or property received to margin, guarantee, or secure the Restructuring European Single Name CDS Contracts:
 - (i) of customers that are not affiliates in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and the CFTC regulations thereunder; and

²¹ If such money, securities and property could not be held in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and CFTC Rules thereunder, it would be held in a segregated account established and maintained in accordance with the Exchange Act and the rules thereunder.

(ii) of customers that are affiliates in a Cleared Swaps Proprietary Account.²²

Alternatively, all money, securities or property received to margin, guarantee, or secure the Restructuring European Single Name CDS Contracts of customers that are not affiliates will be held in a segregated account established and maintained in accordance with Sections 3E and 15(c)(3) of the Exchange Act, as applicable, and the rules thereunder;

- (6) Such BD/FCM will enter into a non-conforming subordination agreement with each customer that is not an affiliate whose money, securities or property is received by such BD/FCM to margin, guarantee, or secure positions in Restructuring European Single Name CDS Contracts held in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and CFTC rules thereunder, and the agreement will contain a specific acknowledgment by the customer that such money, securities or property will not receive customer treatment under the Exchange Act or the Securities Investor Protection Act of 1970 (“SIPA”) or be treated as customer property as defined in 11 U.S.C. 741 in a liquidation of the BD/FCM; as well as an affirmation by the customer that all of its claims with respect to such money, securities, or property against the BD/FCM will be subordinated to the claims of other securities customers and Security-Based Swap customers;
- (7) Such BD/FCM will enter into a non-conforming subordination agreement with each affiliate whose money, securities or property is received by such BD/FCM to margin, guarantee, or secure positions in Restructuring European Single Name CDS Contracts held in a Cleared Swaps Proprietary Account, and the agreement will contain a specific acknowledgment by the affiliate that such money, securities or property will not receive customer treatment under the Exchange Act or SIPA or be treated as customer property as defined in 11 U.S.C. 741 in a liquidation of the BD/FCM and that such money, securities or property will be held in a proprietary account in accordance with CFTC requirements; as well as an affirmation by the affiliate that all of its claims with respect to such money, securities, or property against the BD/FCM will be subordinated to the claims of other securities customers and Security-Based Swap customers;
- (8) With respect to customers that are affiliates of such BD/FCM, the BD/FCM will obtain from the affiliate an opinion of counsel that the affiliate is legally authorized to subordinate all of its claims against the BD/FCM to those of other customers;
- (9) As soon as practicable and in any event within one business day following the creation of a Restructuring European Single Name CDS Contract, a BD/FCM will furnish to each customer that is not an affiliate of the BD/FCM a disclosure document containing the following information:
 - (i) (a) a statement indicating that the customer’s money, securities and property received by such BD/FCM to margin, guarantee, or secure positions in Restructuring European Single Name CDS Contracts will be held in an account maintained in accordance with the segregation requirements of Section 4d(f) of the CEA and a general description of the treatment of such money, securities and

²² The term “Cleared Swaps Proprietary Account” is defined in Rule 22.1 under the CEA and includes an account for Cleared Swaps and associated collateral for persons with certain relationships with FCMs.

property in the event that the BD/FCM is subject to a bankruptcy proceeding or other similar proceeding; and

(b) a statement that the broker-dealer segregation requirements of Section 15(c)(3) and Section 3E of the Exchange Act and the rules thereunder, and the customer protections under SIPA and the stockbroker liquidation provisions, will not apply to such customer money, securities, and property; or

- (ii) if the customer's money, securities and property received by such BD/FCM is being held in segregated accounts other than those maintained in accordance with Section 4d(f) of the CEA, a statement that such money, securities and property are being held in segregated accounts in accordance with the Exchange Act and the rules thereunder;
- (10) Under CME Rules, market participants are not permitted to increase, close out or otherwise affect the size of a position in Restructuring European Single Name CDS Contracts, other than due to the occurrence of a Credit Event, a close out of a defaulting customer's positions, or withdrawal from clearing CDS Clearing Membership in accordance with CME Inc. rules. CME Inc. may impose an increase or decrease in the position of a Restructuring European Single Name CDS Contract through its default management process;
- (11) Absent relief from the Commission or Staff in addition to that requested in this letter, CDS Clearing Members may not clear, and CME Inc. will not accept for clearing, any Security-Based Swaps with CME Inc., either for their proprietary or customer accounts, other than Restructuring European Single Name CDS Contracts.

Finally, CME Inc. will keep and preserve at least one copy of all documents (including, but not limited to, correspondence, memoranda, papers, books, notices, accounts and other records) made or received by it in connection with its iTraxx Contracts clearance and settlement services for its CDS Clearing Members and will provide such information on Restructuring European Single Name CDS Contracts as may be requested by the Commission.

6. Relief Requested

Based on the facts, analysis and representations set out above, CME Inc. requests advice from the Division that it will not recommend enforcement action against:²³

- CME Inc. under the registration requirements of Section 17A(b)(1) of the Exchange Act in connection with the provision of clearance and settlement services to CDS Clearing Members and the customers of CDS Clearing Members in respect of Restructuring European Single Name CDS Contracts, as described in this request;
- CME Inc.'s CDS Clearing Members under Section 3C(a) of the Exchange Act by reason of clearing Security-Based Swaps, either with respect to their proprietary positions or on behalf of customers, through an unregistered clearing agency if CME Inc. provides clearance and

²³ The requested relief is substantially the same as the no-action relief granted in Letter from Mr. Christophe Hemon, CEO, LCH.Clearnet SA, to Mr. James Burns, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission (Sept. 27, 2013), available at <http://www.sec.gov/divisions/marketreg/mr-noaction/2013/lch-clearnet-sa-092713.pdf>, and in Letter from Mr. Christophe Hemon, CEO, LCH.Clearnet SA, to Mr. James Burns, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commissions (Dec. 30, 2013), available at <http://www.sec.gov/divisions/marketreg/mr-noaction/2013/lch-clearnet-sa-123013.pdf>.

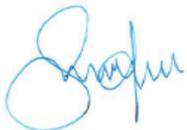
settlement services to CDS Clearing Members and their customers in respect of Restructuring European Single Name CDS Contracts, as described in this request, in the event that the Commission determines that the clearing requirement shall apply to Restructuring European Single Name CDS Contracts pursuant to Section 3C of the Exchange Act;

- CME Inc. under Sections 3E(b), 3E(d) and 3E(e) of the Exchange Act in connection with the commingling of Restructuring European Single Name CDS Contracts and Index CDS that are customer positions and all associated money, securities, and property received to margin, secure or guarantee such customer positions in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and the rules thereunder;
- CME Inc.'s CDS Clearing Members that are BD/FCMs, under Sections 3E(b), 3E(d), 3E(e), and Section 15(c)(3) of the Exchange Act, and Rule 15c3-3 thereunder, in connection with commingling Restructuring European Single Name CDS Contracts and Index CDS that are customer positions and all associated money, securities, and property received to margin, secure, or guarantee such customer positions in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and the rules thereunder; and
- CME Inc.'s CDS Clearing Members that are BD/FCMs, under Exchange Act Rules 8c-1 and 15c2-1 if the CDS Clearing Members do not treat an affiliate (as defined in association with the definition of "Cleared Swaps Proprietary Account" under CEA Rule 22.1) as a customer in connection with commingling Restructuring European Single Name CDS Contracts and Index CDS that are customer positions and all associated money, securities, and property received to margin, secure or guarantee such customer positions in a Cleared Swaps Proprietary Account.

* * * * *

Thank you for your consideration of this request. If you have any questions or need additional information, please contact me by phone at (312) 634-1592 or by email at sunil.cutinho@cmegroup.com, or CME Inc.'s outside counsel, Matthew Comstock, by phone at (202) 661-7034 or by email at mcomstock@mmlawus.com.

Sincerely,



Sunil Cutinho
Senior Managing Director and President, CME Clearing

cc: Gary Goldsholle, Deputy Director,
Division of Trading and Markets, U.S. Securities and Exchange Commission
Wenchi Hu, Associate Director,
Division of Trading and Markets, U.S. Securities and Exchange Commission
Gena Lai, Senior Special Counsel,
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Jason Silverstein, Executive Director and Associate General Counsel, CME Group

Tim Elliott, Executive Director and Associate General Counsel, CME Group

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