

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76678; File No. 600-35)

December 17, 2015

Order Granting Chicago Mercantile Exchange Inc.'s Request to Withdraw from Registration as a Clearing Agency

I. Introduction

On August 3, 2015, Chicago Mercantile Exchange Inc. ("CME") filed with the Securities and Exchange Commission ("Commission") a written request (the "Written Request")¹ to withdraw from registration as a clearing agency under Section 17A of the Exchange Act ("Exchange Act").² The Commission published notice of CME's request in the Federal Register on September 1, 2015, to solicit comments from interested persons.³ The Commission received no comments regarding the request. For the reasons discussed below, the Commission is granting CME's request to withdraw its registration as a clearing agency and requiring CME to retain and produce upon request certain records.

II. Discussion and Commission Findings

CME is registered as a derivatives clearing organization ("DCO") with the Commodity Futures Trading Commission ("CFTC") and offers clearing services for futures and swap products. Pursuant to Section 17A(l) of the Exchange Act,⁴ CME became "deemed registered" as a clearing agency solely for the purpose of clearing security-based swaps ("SBS"). To date, CME has represented that it never cleared SBS and that it will not clear SBS (subject to the

¹ See Letter from Larry E. Bergmann and Joseph C. Lombard, on behalf of CME, to Brent J. Fields, Secretary, Securities and Exchange Commission (August 3, 2015).

² 15 U.S.C. 78q-1.

³ Securities Exchange Act Release No. 34-75762 (Aug. 26, 2015), 80 FR 52815 (Sept. 1, 2015) (600-35).

⁴ 15 U.S.C. 78q-1(l).

limited exception as described below).⁵ CME also has filed an immediately-effective rule change with the Commission (File Number SR-CME-2014-49) reflecting its decision not to clear SBS.⁶

As a registered clearing agency, CME is required to comply with the requirements of the Exchange Act and the rules and regulations thereunder applicable to registered clearing agencies. These requirements include the obligation to file proposed rule changes pursuant to Section 19(b) of the Exchange Act.⁷ CME, as a DCO, generally implements rule changes by self-certifying that the new rule complies with the Commodity Exchange Act and the CFTC's regulations. Following the effectiveness of the proposed rule change (SR-CME-2014-49) regarding CME's decision not to clear SBS, CME claimed that the overlapping but divergent rule review processes required pursuant to the Commodity Exchange Act and the Exchange Act have resulted in significant difficulties for CME.⁸ Furthermore, CME concluded that given the

⁵ See Written Request at 2.

⁶ See Securities Exchange Act Release No. 73615 (Nov. 17, 2014), 79 FR 69545 (Nov. 21, 2014) (SR-CME-2014-49). The only exception is with respect to a set of very limited circumstances beyond CME's control where single-name CDS contracts are created following the occurrence of a restructuring credit event in respect of a reference entity that is a component of an iTraxx Europe index CDS contract ("iTraxx Contract"). According to the standard terms of the iTraxx Contract, upon the occurrence of a restructuring credit event with respect to a reference entity that is a component of an iTraxx Contract, such reference entity will be "spun out" and maintained as a separate single-name CDS contract (a "Restructuring European Single Name CDS Contract") until settlement. If neither of the counterparties elects to trigger settlement, the positions in the Restructuring European Single Name CDS Contract will be maintained at CME until maturity of the index or the occurrence of a subsequent credit event for the same reference entity. CME stated that the potential clearing of Restructuring European Single Name CDS Contracts would be a necessary byproduct of clearing iTraxx Contracts. The Commission notes that CME has obtained no-action relief from the Division of Trading and Markets with regard to this circumstance.

⁷ 15 U.S.C. 78s(b).

⁸ See Written Request at 4-5.

absence of any actual or potential securities clearing activity by CME (with the limited exception of potentially clearing Restructuring European Single Name CDS Contracts), it believed that clearing agency registration is unnecessary and that future rule filings (whether eligible for immediate effectiveness or not) would be wasteful of both the Commission's and CME's resources and serve no statutory purpose. CME therefore submitted its request for withdrawal of its clearing agency registration pursuant to Section 19(a)(3) of the Exchange Act,⁹ which states that a self-regulatory organization may "withdraw from registration by filing a written notice of withdrawal with the Commission," upon such terms and conditions as the Commission, by rule, deems necessary or appropriate in the public interest or for the protection of investors.

Based upon the representations made by CME to the Commission, the Commission has determined that granting CME's request to withdraw from registration is appropriate. CME represents it is not performing actions that require registration as a clearing agency under Section 17A of the Exchange Act and has provided specific assurances regarding record-keeping, record-production and the lack of potential for future claims against it resulting from its registration as a clearing agency.¹⁰ In its Written Request, CME represents that it will not seek to engage in securities clearing activity in reliance on any "deemed registered" status pursuant to Section 17A(l) of the Exchange Act.¹¹ CME further represents that if an affiliate of CME seeks to clear SBS or another securities product, such affiliate would do so after registering with the Commission pursuant to the process set forth in Commission Rule 17Ab2-1.¹²

⁹ See Written Request. See also 15 U.S.C. 78s(a)(3).

¹⁰ See Written Request at 2, 5-6.

¹¹ See Written Request at 2, note 3. See also 15 U.S.C. 78q-1(l).

¹² See Written Request at 2, note 3. See also 17 CFR 17Ab2-1.

Additionally, CME states that because CME never conducted any clearing activity for SBS, it has no known or anticipated claims associated with its clearing agency registration.¹³ Furthermore, CME represents in the Written Request that it will maintain all documents, books, and records, including correspondence, memoranda, papers, notices, accounts and other records (collectively “records”) made or received by it in connection with proposed rule changes filed with the Commission or in connection with its index CDS clearance and settlement services as required to be maintained under Rule 17a–1(a) and (b).¹⁴ In the Written Request, CME further represents that it will produce such records and furnish such information at the request of any representative of the Commission, and will maintain such records for a period of 5 years from the effective date of the withdrawal of CME’s registration as a clearing agency.¹⁵ As noted above, no comments were received in response to the published notice of CME’s Written Request to withdraw from registration as a clearing agency, which included CME’s representations regarding maintenance of records and record production, as well as CME’s representations regarding any potential for claims associated with its clearing agency registration.

¹³ See Written Request at 6.

¹⁴ See Written Request at 5, note 15. See also 17 CFR 240.17a-1(a) and (b).

¹⁵ See Written Request at 5, note 15.

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(a)(3) of the Exchange Act,¹⁶
that:

- 1) Effective December 17, 2015, CME's registration as a clearing agency under Section 17A of the Exchange Act is withdrawn and
- 2) For a period of 5 years from the effective date of withdrawal of registration as a clearing agency, CME will maintain all the records required to be maintained pursuant to Rule 17A-1(a) and (b) which are in CME's possession and will produce such records upon the request of any representative of the Commission.

By the Commission.

Robert W. Errett
Deputy Secretary

¹⁶ 15 U.S.C. 78s(a)(3).