

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75762; File No. 600-35)

August 26, 2015

Notice of Filing and Request for Comment on Chicago Mercantile Exchange Inc.'s Request to Withdraw from Registration as a Clearing Agency

I. Introduction

Pursuant to Section 19(a)(3) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> on August 3, 2015, Chicago Mercantile Exchange Inc. (“CME”) filed with the Securities and Exchange Commission (“Commission”) a written request (the “Written Request”) to withdraw from registration as a clearing agency under Section 17A of the Exchange Act.<sup>2</sup> The Commission is publishing this notice to solicit comments from interested persons concerning CME’s request.

II. Description

The statements in this Item II concerning the background of CME’s request for withdrawal from registration and its reasons for making the request have been submitted by CME in its Written Request. 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,<sup>3</sup> CME became deemed registered as a clearing agency solely for the purpose of clearing security-based swaps (“SBS”). To date, CME has never cleared SBS, has decided that it will not clear SBS, and has

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<sup>1</sup> 15 U.S.C. 78s(a)(3).

<sup>2</sup> 15 U.S.C. 78q-1.

<sup>3</sup> 15 U.S.C. 78q-1(l).

filed a rule change with the Commission (File Number SR-CME-2014-49) reflecting CME's decision not to clear SBS.<sup>4</sup>

A. Background

CME. CME states in the Written Request that it is registered with the CFTC as a designated contract market. CME, which is also registered with the CFTC as a DCO, operates CME Clearing. CME Clearing is one of the world's leading central counterparty clearing providers and acts as the guarantor of every transaction that happens in CME's markets. CME Clearing offers clearing and settlement services for exchange-traded contracts as well as for

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<sup>4</sup> 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 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 clearing of Restructuring European Single Name CDS Contracts would be a necessary byproduct of clearing iTraxx Contracts, which commenced on February 2, 2015. CME has filed a rule change that will not permit market participants to increase, close out, or otherwise affect the size of a position in a Restructuring European Single Name CDS Contract, unless such increase, close-out, or change in size of a position in a Restructuring European single Name CDS Contract is due to (i) the occurrence of a credit event (where the Restructuring European Single Name CDS Contract needs to be settled and ceases to exist), (ii) a default management process (where a member defaults on its obligation to CME and CME needs to hedge and auction off the member's portfolio in order to determine the loss amount, or to transfer the defaulting member's customer positions to another clearing member), (iii) close-out of a defaulting customer's positions, or (iv) withdrawal from clearing membership by an existing clearing member, all in accordance with the existing CME rules. According to such rule change, CME may impose an increase or decrease in the position of a Restructuring European Single Name CDS contract only through its default management process under applicable CME rules. See Securities Exchange Act Release No. 34-74055 (Jan. 14, 2015), 80 FR 2991 (Jan. 21, 2014) (SR-CME-2015-001).

over-the-counter derivatives transactions. CME Clearing also limits accumulation of losses or debt with twice daily mark-to-market settlement, and is responsible for settling trading accounts, clearing trades, collecting and maintaining performance bond funds, regulating delivery, and reporting trading data.

Clearing Agency Exemption. On March 23, 2009, the Commission granted CME a temporary conditional exemption from the requirement to register as a clearing agency under Section 17A of the Exchange Act solely to perform the functions of a clearing agency for “Cleared CDS.”<sup>5</sup>

Dodd-Frank Act. Section 763(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”)<sup>6</sup> added Section 17A(l) to the Exchange Act,<sup>7</sup> which provides, in relevant part, that a DCO registered with the CFTC that is required to register under Section 17A is deemed to be registered under Section 17A solely for the purpose of clearing SBS to the extent that, before the date of enactment of Section 17A(l), the DCO cleared swaps pursuant to an exemption from registration as a clearing agency. Pursuant to Section 17A(l), CME became a registered clearing agency solely for the purpose of clearing SBS.<sup>8</sup>

CME states in the Written Request that although it originally anticipated that it would begin clearing SBS, it has not, in fact, cleared SBS since the effective date of the Dodd-Frank

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<sup>5</sup> Securities Exchange Act Release No. 34-59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009). The exemption was subsequently extended. See Securities Exchange Act Release No. 34-61164 (Dec. 14, 2009), 74 FR 67258, (Dec. 18, 2009), Securities Exchange Act Release No. 34-61803 (Mar. 30, 2010), 75 FR 17181, (Apr. 5, 2010), and Securities Exchange Act Release No. 34-63388 (Nov. 29, 2010), 75 FR 75522 (Dec. 3, 2010).

<sup>6</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>7</sup> 15 U.S.C. 78q-1(l).

<sup>8</sup> See Securities Exchange Act Release No. 69284 (Apr. 3, 2013), 78 FR 21046, 21047, n. 20 (Apr. 9, 2013).

Act, and does not engage in any clearing agency activity for SBS or any other security. On November 17, 2014, CME filed a rule change with the Commission reflecting its decision not to clear SBS and remove any provisions in its rulebook applicable to SBS.<sup>9</sup>

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.<sup>10</sup> 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. For purpose of the Commodity Exchange Act and regulations thereunder, this self-certification process allows new rules and rule amendments to become effective ten business days after the date on which the CFTC receives the certification. CME notes that, while some proposed rule changes may become effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act,<sup>11</sup> and Rule 19b-4(f) thereunder,<sup>12</sup> others are required to go through a notice-and-comment period, pursuant to Section 19(b)(2),<sup>13</sup> before the Commission takes action on the proposed rule change. CME states that this process can significantly delay the date that the rule change becomes fully effective. CME claims that, despite the absence of SBS clearing activity by CME, these overlapping but divergent rule review processes have in fact resulted in significant difficulties for CME.

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<sup>9</sup> See supra note 4.

<sup>10</sup> 15 U.S.C. 78s(b).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

B. Withdrawal of CME Pursuant to Section 19(a)(3) of the Exchange Act

Following the effectiveness of the proposed rule change (SR-CME-2014-49) regarding CME's decision not to clear SBS, CME has been filing proposed rule changes pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>14</sup> and Rule 19b-4(f)(4)(ii)<sup>15</sup> thereunder, rendering those changes immediately effective. Nonetheless, CME states in the Written Request that given the absence of any actual or potential securities clearing activity by CME, with the exception of the limited clearing activities CME may need to provide in connection with Restructuring European Single Name CDS Contracts,<sup>16</sup> CME believes that clearing agency registration is unwarranted and unnecessary. CME therefore submits its request for withdrawal of its clearing agency registration pursuant to Section 19(a)(3) of the Exchange Act<sup>17</sup> and respectfully requests that the Commission grant CME's request.

CME further states 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.<sup>18</sup> CME represents in the Written Request 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.<sup>19</sup>

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(4)(ii).

<sup>16</sup> CME recognized that, as noted in SR-CME-2014-49, CME could be required to clear SBS in limited circumstances relating to its clearing services of certain iTraxx Europe index untranching CDS contracts. See supra note 4. CME has submitted a request to the Division of Trading and Markets for no-action relief to address the clearing of such SBS contracts.

<sup>17</sup> 15 U.S.C. 78s(a)(3).

<sup>18</sup> 17 CFR 240.17Ab2-1.

<sup>19</sup> 15 U.S.C. 78q-1(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. 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).<sup>20</sup> 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.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the requested withdrawal is consistent with the Exchange 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/other.shtml>), or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. 600-35 on the subject line.

#### Paper Comments:

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

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<sup>20</sup> 17 CFR 240.17a-1(a) and (b).

All submissions should refer to File Number 600-35. 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/other.shtml>). Comments are also 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.

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 600-35 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Robert W. Errett  
Deputy Secretary