

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73232; File No. SR-CME-2014-30)

September 26, 2014

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Related to 2014 ISDA Definitions

I. Introduction

On August 11, 2014, Chicago Mercantile Exchange Inc. (“CME”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-CME-2014-30 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the Federal Register on August 19, 2014.³ The Commission did not receive comments on the proposed rule change. On September 22, 2014, CME filed Amendment No. 1 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-72837 (Aug. 13, 2014), 79 FR 49132 (Aug. 19, 2014) (SR-CME-2014-30) (hereinafter referred to as the “Initial Rule Filing”).

⁴ CME filed Amendment No. 1 to the proposed rule change to (i) reflect the exclusion of certain entities referenced in CDX indices from the 2014 ISDA Credit Derivatives Definitions Protocol and (ii) reflect the recent change of the implementation date of the 2014 ISDA Credit Derivatives Definitions Protocol from September 22, 2014, to October 6, 2014, as discussed in more detail below.

II. Description of the Proposed Rule Change

A. Description of the Initial Rule Filing

CME proposes to revise its clearing rules (the “CDS Product Rules”) to (i) incorporate references to revised Credit Derivatives Definitions, as published by the International Swaps and Derivatives Association, Inc. (“ISDA”) on February 21, 2014 (the “2014 ISDA Definitions”), which are the successor definitions to the 2003 Credit Derivatives Definitions published by ISDA and as supplemented in 2009 (the “2003 ISDA Definitions”), and (ii) provide greater clarity with respect to the operation of certain provisions in the CDS Product Rules. CME’s implementation of the proposed rule change is intended to coincide with the date on which the credit derivatives market is expected to transition to the 2014 ISDA Definitions (the “2014 ISDA Definitions Implementation Date”).⁵ As such, CME states that the proposed rule change would become effective on September 22, 2014, or on such later date that CME otherwise determines. CME further states that, to the extent that the credit derivatives market does not transition to the 2014 ISDA Definitions, the proposed rule change will not become effective.

CME states that the 2014 ISDA Definitions make changes to a number of the standard terms with respect to CDS contracts when compared to the 2003 ISDA Definitions. According to CME, key changes include the introduction of new provisions relating to: (i) the settlement of credit events relating to financial and sovereign reference entities by delivery of assets other than bonds or loans that constitute deliverable obligations, (ii) transactions that would be impacted by

⁵ At the time of the Initial Rule Filing, CME anticipated that this transition date would be September 22, 2014. In response to subsequent changes in the planned industry-wide implementation date, CME amended its proposal and now plans to accept for clearing contracts referencing the 2014 ISDA Definitions by the time of the updated industry-wide implementation date of October 6, 2014, and to convert certain existing contracts to the 2014 ISDA Definitions as of October 6, 2014. See supra note 4 and the discussion of Amendment No. 1 below.

a government bail-in of certain financial reference entities, (iii) standard reference obligations for certain more frequently traded reference entities, and (iv) other technical amendments and improvements. CME states that the impact of the modifications to the 2014 ISDA Definitions relating to (i) the Successor provisions and (ii) the inclusion of Asset Package provisions are of particular note in relation to CME's proposed changes to the CDS Product Rules. CME further states that notwithstanding the proposed changes to the CDS Product Rules relating to Asset Package provisions, none of the CDS products that CME currently clears are anticipated to be subject to and/or impacted by such changes.

CME proposes to revise Chapters 800, 801, 802, 804, and 805 of the CDS Product Rules to align them with the 2014 ISDA Definitions.⁶ The proposed changes would primarily provide for the conversion of existing contracts which are currently based on the 2003 ISDA Definitions into contracts based on the 2014 ISDA Definitions in conformance with the anticipated 2014 ISDA Credit Derivatives Definitions Protocol (as amended and/or supplemented from time to time) (the "2014 Protocol") and allow for new cleared CDS products to incorporate the 2014 ISDA Definitions. Under CME's proposal, following the 2014 ISDA Definitions Implementation Date, the 2014 ISDA Definitions will apply to both (i) open positions cleared by CME (the "Converting Contracts") and (ii) new CDS contracts cleared by CME, consistent with market practice. In furtherance of this, CME proposes to make conforming changes throughout the CDS Product Rules to refer to and/or conform to the 2014 ISDA Definitions. Additionally, CME proposes to add provisions to the CDS Product Rules to provide for the deemed amendment of all Converting Contracts on the 2014 ISDA Definitions Implementation Date.

⁶ A more detailed description of the proposed changes to the CDS Product Rules is set forth in the notice of the Initial Rule Filing. See supra note 3.

CME also proposes to make a number of non-substantive conforming and numbering changes as part of the proposed rule change.

B. Description of Amendment No. 1

On September 22, 2014, CME filed Amendment No. 1 to the proposed rule change to (i) reflect the exclusion of certain entities referenced in CDX indices⁷ from the 2014 Protocol, which will be used by the market to update certain existing bilateral CDS Contracts to the 2014 ISDA Definitions, and (ii) to reflect the recent amendment of the implementation date of the 2014 Protocol from September 22, 2014, to October 6, 2014. CME states that the proposed amendments would avoid a mismatch between open positions in CDS Contracts cleared by CME, which would otherwise be updated to the 2014 ISDA Definitions under the proposed rule change described in the Initial Rule Filing, and the bilateral CDS market, which ultimately decided not to update certain CDS on certain reference entities to be based on the 2014 ISDA Definitions, and will also amend the proposed rule change to the CDS Product Rules described in the Initial Rule Filing to be in line with recent market developments.

As described above, CME's Initial Rule Filing proposes to update its CDS Product Rules to provide for the conversion of all open positions in CDS contracts cleared by CME into contracts based on the 2014 ISDA Definitions (i.e., Converting Contracts). CME states that, at the time of the Initial Rule Filing, there was an understanding in the CDS market that all CDX Component Transactions (as defined in the CDS Product Rules) would be Converting Contracts and, based on this understanding, the proposed rule change in the Initial Rule Filing did not

⁷ Currently, CME offers clearing of (i) the Markit CDX North American Investment Grade Index Series 8 and forward and (ii) the Markit CDX North American High Yield Index Series 13 and forward (collectively, the "CDX Contracts").

contemplate that certain CDX Component Transactions may continue to reference the 2003 ISDA Definitions post the 2014 ISDA Definitions Implementation Date.

CME states that, subsequent to its submission of the Initial Rule Filing, the market revised the list of reference entities that will be excluded from the 2014 Protocol (the “Excluded Reference Entity List”) and which will continue to reference the 2003 ISDA Definitions post the 2014 ISDA Definitions Implementation Date, inter alios, by adding to the Excluded Reference Entity List certain entities referenced in CDX Contracts which CME clears and therefore, it will be necessary for the CDS Product Rules to provide for CDX Component Transactions to which the 2003 ISDA Definitions may continue to apply. CME states that, accordingly, certain CDX Contracts which CME clears will, following the 2014 ISDA Definitions Implementation Date, be bifurcated such that certain CDX Component Transactions will continue to reference the 2003 ISDA Definitions (such transactions, “2003 Definitions Transactions”), and certain other CDX Component Transactions will reference the 2014 ISDA Definitions (such transactions “2014 Definitions Transactions”). As a result of this bifurcation, CME proposes to split Chapters 800, 802, 804 and 805 of its current CDS Product Rules into separate sub-parts to provide for CDX Component Transactions depending on whether such transactions are 2014 Definitions Transactions or 2003 Definitions Transactions.

In Amendment No. 1, CME proposes to amend the Initial Rule Filing to add to its CDS Product Rules the following sub-parts to provide for CDX Component Transactions that are 2003 Definitions Transactions: Chapters 800: Part: C, 802: Part B, 804: Part C and 805: Part D. CME notes that the labeling of such sub-parts takes into account that other sub-parts to the above-mentioned chapters are concurrently being proposed to the Commission pursuant to

CME's proposal to amend its clearing rules to enable it to clear iTraxx contracts.⁸ CME also proposes to amend certain definitions in Chapter 800 (Credit Default Swaps: Part A) which were proposed in the Initial Rule Filing to align its implementation of the 2014 ISDA Definitions with the recently adopted approach in the bilateral CDS market. A concise description of the amendments is set out below.

1. Chapter 800 (Credit Default Swaps: Part A)

CME proposes to make conforming changes to the definitions of “Asset Package Notice” and “2014 Definitions Transaction” in Chapter 800 (Credit Default Swaps: Part A), which were proposed in the Initial Rule Filing, to align these definitions with bifurcations proposed to the Commission pursuant to CME's proposal to amend its clearing rules to enable it to clear iTraxx contracts.⁹ In addition, CME also proposes to amend the definitions of “Implementation Date” and “Converting Contract” in Chapter 800 (Credit Default Swaps: Part A) in light of recent market developments to provide for the amendment of all Converting Contracts on the date on which certain existing contracts are converted to the 2014 ISDA Definitions in accordance with the 2014 Protocol.

2. Chapter 800 (Credit Default Swaps: Part C)

CME proposes to add a sub-part to Chapter 800 entitled “Credit Default Swaps: Part C.” Chapter 800: Part C provides the meanings of capitalized terms that are used but not defined within the proposed rules and the location of the meanings of any terms used in the proposed rules but not defined within Chapter 800: Part C. In addition, CME proposes to include CME Rule 80002.C (Interpretation), which provides for the interpretation of certain contractual terms

⁸ See Securities Exchange Act Release No. 34-72833 (Aug. 13, 2014), 79 FR 48797 (Aug. 18, 2014) (SR-CME-2014-31).

⁹ Id.

used within the proposed rules, and CME Rule 80003.C (Notices and Clearing House System Failures), which provides for how notices are to be provided by, or to, CME and also for the extension of applicable deadlines for the delivery of notices if CME, or any of its clearing members, is unable to deliver or receive notices due to a failure of the relevant CME internal system. CME notes that proposed CME Rule 80002.C and CME Rule 80003.C are substantially similar to CME Rule 80001 and CME Rule 80002, respectively,¹⁰ that are provided in the currently published Chapter 800 of the CDS Product Rules.

3. Chapter 802 (CDX Index Untranching CDS Contracts: Part B)

CME proposes to add a sub-part to Chapter 802 entitled “CDX Index Untranching CDS Contracts: Part B.” CME represents that Chapter 802: Part B is substantially the same as the currently published Chapter 802, with the exception that certain clarifications have been added to make it clear that Chapter 802 has been bifurcated and that Chapter 802: Part B will only apply to 2003 Definitions Transactions. In addition, changes would be made to remove provisions relating to Succession Events and/or Succession Event Resolution Request Dates occurring prior to June 20, 2009, as these are historic provisions within the definition of Succession Event Backstop Date that are no longer relevant, and the Appendix to Chapter 802 has been updated to delete expired CDX Contracts.¹¹

4. Chapter 804 (CME CDS Risk Committee: Part C)

CME proposes to add a sub-part to Chapter 804 entitled “CME CDS Risk Committee: Part C” to apply only in connection with 2003 Definitions Transactions. CME notes that Chapter

¹⁰ Pursuant to a teleconference with representatives of CME on September 23, 2014, staff in the Division of Trading and Markets has corrected incorrect cross-references to currently published CME Rules 80002 and 80003 contained in CME’s filing.

¹¹ Pursuant to a teleconference with representatives of CME on September 23, 2014, staff in the Division of Trading and Markets confirmed that CME is not proposing to add new CDX Contracts to the Appendix to Chapter 802 as incorrectly stated in CME’s filing.

804: Part C is substantially similar to the currently published Chapter 804 with the exception that Chapter 804: Part C grants an additional authority to the CDS RC to determine matters of contractual interpretation relevant to market standard documentation incorporated into the terms of a CDS Contract. In addition, CME proposes modifications to the existing CDS Product Rules in order to ensure alignment of the CDS Product Rules with the current market practices (as proposed by ISDA) to clarify the circumstances under which the CDS RC may make such determinations to avoid determinations that are inconsistent with DC determinations, and other conforming, clarification changes and drafting improvements.

5. Chapter 805 (CME CDS Physical Settlement: Part D)

CME proposes to add a sub-part to Chapter 805 entitled “CME CDS Physical Settlement: Part D.” Chapter 805: Part D provides for the physical settlement process that will apply as the fallback settlement method with respect to 2003 Definitions Transactions in circumstances where auction settlement does not apply. CME represents that the substance of the new provisions is based on the currently published Chapter 805 of the CDS Product Rules, with some additional features as described in further detail below.

CME Rule 80502.D.A (Matched Pair Notice) would provide additional detail in relation to the matching process. CME states that the additions do not substantively alter the CDS Product Rules, but rather, seek to provide greater clarity with respect to the current matching process and how such process will work in respect of CDS Contracts.

CME Rule 80507.D (Clearing House Guarantee of Matched Pair CDS Contracts) and CME Rule 80508.D (Failure to Perform Under Matched Pair CDS Contracts) would be updated to align the matching process with the general physical settlement provisions of CME as set out in Chapter 7 (Delivery Facilities and Procedures).

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act¹² directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act¹³ requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 17A of the Act¹⁴ and the rules thereunder applicable to CME. CME plans to accept for clearing contracts referencing the industry standard 2014 ISDA Definitions by the time of the planned industry-wide implementation on October 6, 2014, and to convert certain existing contracts to the new definitions as of that date. The proposed rule change, which is principally designed to incorporate and implement the 2014 ISDA Definitions, would permit the clearing of both new and existing contracts referencing the new definitions. Additionally, the proposed rule change, as modified by Amendment No. 1, will allow CME to continue to offer clearing of certain CDX Component Transactions that may continue to reference the 2003 ISDA Definitions post the implementation date of the 2014 ISDA Definitions. The Commission therefore believes that the proposed rule change is reasonably designed to promote the prompt

¹² 15 U.S.C. 78s(b)(2)(C).

¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴ 15 U.S.C. 78q-1.

and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, consistent with Section 17A(b)(3)(F) of the Act.¹⁵

IV. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1

As discussed above, CME submitted Amendment No. 1 to the proposed rule change to (i) reflect the exclusion of certain entities referenced in CDX indices from the 2014 Protocol, which will be used by the market to update certain existing bilateral CDS Contracts to the 2014 ISDA Definitions, and (ii) to reflect the recent change of the implementation date of the 2014 Protocol from September 22, 2014 to October 6, 2014. The Commission believes that the modification by Amendment No. 1 to the proposed rule change as described in the Initial Rule Filing¹⁶ is consistent with the industry protocol, which has been widely accepted by participants in the CDS market, and will (i) permit CME to continue to offer clearing of certain CDX Component Transactions that may continue to reference the 2003 ISDA Definitions post the implementation date of the 2014 ISDA Definitions and (ii) address the necessary change in the timing of the clearing of transactions incorporating the 2014 ISDA Definitions in light of the change in the implementation timing of the industry-wide ISDA protocol, thereby facilitating the trading and clearing of CDS throughout the entire credit derivatives market. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,¹⁷ to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of Amendment No. 1 in the Federal Register.

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ The Initial Rule Filing was published in the Federal Register on August 19, 2014, for 21-day comment and the comment period ended on September 9, 2014. The Commission did not receive comments on the Initial Rule Filing.

¹⁷ 15 U.S.C. 78s(b)(2)(C)(iii).

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 1 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. Please include File Number SR-CME-2014-30 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.

All submissions should refer to File Number SR-CME-2014-30. 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 the filing also will be available for inspection and copying at the

principal office of CME and on CME's website at <http://www.cmegroup.com/market-regulation/rule-filings.html>.

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-2014-30 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act¹⁸ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (File No. SR-CME-2014-30), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.²⁰

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Kevin M. O'Neill
Deputy Secretary

¹⁸ 15 U.S.C. 78q-1.

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

²¹ 17 CFR 200.30-3(a)(12).