

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68207; File No. SR-CME-2012-43)

November 9, 2012

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Comply with CFTC Part 22 Regulations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 31, 2012, Chicago Mercantile Exchange Inc. (“CME”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I and II below, which Items have been prepared primarily by CME. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

CME proposes to amend certain of its rules to comply with the Commodity Futures Trading Commission’s Part 22 Regulations. The text of the proposed rule change is available at the CME’s Web site at <http://www.cmegroup.com>, at the principal office of CME, and at the Commission’s Public Reference Room.

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

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

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

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

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

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

CME is registered as a derivatives clearing organization (“DCO”) with the Commodity Futures Trading Commission (“CFTC”) and operates a substantial business clearing futures and swaps contracts subject to the jurisdiction of the CFTC. CME proposes to make changes to CME Rules 802 and 901; CME Rules 8G04, 8G802, 8H04 and 8H802 to comply with the CFTC’s Part 22 Regulations. The compliance date for these Regulations is November 14, 2012.<sup>4</sup> CME will also make corresponding changes to CME’s Clearing House Manuals of Operation for Interest Rate Swaps and CME's Clearing House Manuals of Operation for Credit Default Swaps to account for the proposed rule changes.

The proposed rule changes are intended, among other things, to implement CFTC requirements regarding the protection of cleared swaps customer contracts and collateral which became effective on April 9, 2012. DCOs like CME are required to comply with these requirements by November 14, 2012, as set forth in Part 22 of the CFTC Regulations.<sup>5</sup> The CFTC Part 22 Regulations implement the new CFTC customer protection model for cleared

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

<sup>4</sup> The original compliance date for CFTC’s Part 22 Regulations was November 8, 2012. Subsequent to CME filing the proposed rule change with the Commission, due to the effects of Hurricane Sandy, the CFTC issued a no-action letter applicable for the period from November 8, 2012, to November 13, 2012, which in effect delayed the compliance date for the provisions of CFTC’s Part 22 rules relevant to this proposed rule change to November 14, 2012. See Commodity Futures Trading Commission Letter No. 12-30, Staff No-Action Relief, Temporary Delay of Compliance Date for Part 22 Rules Due to Effects of Hurricane Sandy (October 31, 2012) (<http://cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/12-30.pdf>).

<sup>5</sup> See supra note 4.

swaps customers - the legal segregation with operational commingling model (“LSOC Model” or “Complete Legal Segregation Model”).

The proposed rule changes also set forth new requirements for post-default cleared swaps customer account processing. Under the proposed process, upon the default of a clearing member, CME would cease netting of settlement variation within the operationally commingled account and calculate obligations to CME separately for each customer. As further set forth in the rule, each cleared swaps customer would then be required to pay directly to CME any obligations to CME associated with its cleared swaps positions. Where appropriate, similar rules have been adopted in the related sections of the default rules of each of CME’s three financial safeguard packages: base products, interest rate swaps (“IRS”) and credit default swaps (“CDS”).

The proposed changes to CME Rules 802 and 901 can be summarized as follows:

- Rule 802.A harmonizes the definition of a clearing member default with those in Rules 8G802.A and 8H802.A.
- Rule 802.B clarifies the approach the Clearing House may take in liquidating any open contracts of a defaulted clearing member, including book entry that offsets open commodity contracts on the books of the defaulting clearing member; liquidation in the open market; and/or one or more private auctions amongst qualified market participants invited by the Clearing House to submit confidential bids.
- Rule 802.G sets forth new requirements for post-default cleared swaps customer account processing, with the Clearing House treating positions and collateral of a defaulting clearing member’s cleared swaps customers in accordance with Part 22 of the Commission’s regulations. The rule also requires the Clearing House to

cease netting of settlement variation in the cleared swaps customer account class upon a clearing member default and discusses the processes that the Clearing House would use to manage such customer accounts.

- New Rule 901.P provides that each Clearing Member would be required to use systems and appropriate procedures to accurately track and provide to the Clearing House the positions and collateral of each of its cleared swaps customers.

The proposed changes to CME Rules 8G802 and 8G04 can be summarized as follows:

- Rule 8G802.A clarifies the rights of CME for the use of an IRS Clearing Member's and its customer's collateral in the event of a default of an IRS Clearing Member in conformity with the Part 22 regulations. Rule 8G802.A.1(i) would also harmonize the definition of a clearing member default with rules 802.A and 8H802.A.
- Rule 8G802.B sets forth amended procedures for establishing a close out value for IRS contracts to be consistent with Part 22. Section B.3 of the rule would provide for revised netting and offset provisions for the final settlement cycle upon an IRS Termination Event.
- Rule 8G802.G is amended to remove the customer mutualization within the customer account class for IRS to conform to the Part 22 Regulations.
- Rule 8G802.I sets forth the new requirements for cleared swaps customer account processing with CME after the default of an IRS Clearing Member treating positions and collateral of a defaulting clearing member's cleared swaps customers in accordance with Part 22 of the Commission's regulations. The rule

also requires CME to cease netting of settlement variation in the cleared swaps customer account class upon an IRS Clearing Member default and establishes processes for CME to use to manage such customer accounts.

- New Rule 8G04.5 provides that each IRS Clearing Member would be required to use systems and appropriate procedures to accurately track and provide to CME the IRS positions and collateral of each of its cleared swaps customers.
- The IRS Manual is also being revised to make conforming changes related to the Part 22 regulations.

The proposed changes to CME Rules 8H802 and 8H04.12 can be summarized as follows:

- Rule 8H802.A clarifies the rights of CME for the use of a CDS Clearing Member's and its customer's collateral in the event of a default of a CDS Clearing Member in conformity with the Part 22 Regulations.
- Rule 8H802.B sets forth amended procedures for establishing a close out value for CDS contracts to be consistent with Part 22. Section B.3 of the rule would provide for revised netting and offset provisions for the final settlement cycle upon a CDS Termination Event.
- Rule 8H802.G is amended to remove the customer mutualization of the customer account class for CDS to conform to the Part 22 regulations.
- Rule 8H802.I sets forth the new requirements for cleared swaps customer account processing with CME after the default of a CDS Clearing Member treating positions and collateral of a defaulting clearing member's cleared swaps customers in accordance with Part 22 of the Commission's regulations. The rule also requires CME to cease netting of settlement variation in the cleared swaps

customer account class upon the default of a CDS Clearing Member and establishes processes for CME to use to manage such customer accounts.

- New Rule 8H04.12 provides that each CDS Clearing Member would be required to use systems and appropriate procedures to accurately track and provide to CME the CDS positions and collateral of each of its cleared swaps customers.
- The CDS Manual is also being revised to make conforming changes related to the Part 22 Regulations.

CME proposes to make these rule changes effective on November 14, 2012. CME also made a filing, CME Submission 12-347, with its primary regulator, the CFTC, with respect to the proposed rule changes.

CME believes the proposed changes are consistent with the requirements of the Exchange Act including Section 17A. The rule changes are being proposed to comply directly with the CFTC's Part 22 Regulations, which are designed to protect investors, or in CME's view, are critical in facilitating CME's compliance with Part 22 (e.g., the new provisions for post-default cleared swaps customer account processing that require the Clearing House to cease netting of settlement variation in the cleared swaps customer account class and require each cleared swaps customer to pay directly to CME any obligations to CME associated with its cleared swaps positions).<sup>6</sup> As such, the proposed changes are designed to promote the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and, in general, help to protect investors and the public interest.

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<sup>6</sup> Telephone conversation among Tim Elliot, Executive Director and Associate General Counsel, CME; Jason Silverstein, Executive Director and Associate General Counsel, CME; Gena Lai, Senior Special Counsel, SEC; Justin Byrne, Attorney-Advisor, SEC; November 9, 2012.

CME, a derivatives clearing organization registered with the CFTC, further notes that it is required to implement the proposed changes to comply with applicable CFTC regulations. CME notes that the policies of the Commodity Exchange Act (“CEA”) with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

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

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

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

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Solicitation of Comments

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

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CME-2012-43 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-CME-2012-43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME and on 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-2012-43 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act<sup>7</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.

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<sup>7</sup> 15 U.S.C. 78s(b).

The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act, and the rules and regulations thereunder applicable to CME.<sup>8</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, which requires, among other things, that the rules of a registered clearing agency be designed 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 to protect investors and the public interest.<sup>9</sup>

In its filing, CME requested that the Commission approve this proposed rule change on an accelerated basis for good cause shown. CME cites as the reason for this request that the proposed changes are necessary to facilitate CME's compliance with new CFTC regulations that become effective on November 14, 2012.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register because, as a registered derivatives clearing organization, CME must amend certain of its rules to comply with the CFTC's Part 22 Regulations that will become effective on November 14, 2012.

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<sup>8</sup> 15 U.S.C. 78q-1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CME-2012-43) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).