

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange believes the proposed reduction of the on-going monthly fee is reasonable because it is in line with Exchange fees for similar power levels using multiple cabinets. The Exchange also believes the reduction to the on-going monthly fee is equitable and not unfairly discriminatory because the super high-density power option is entirely voluntary and available to all members; therefore, the reduction is available to all members that select this power option. Also, the Exchange believes the reduction in fees is equitable and not unfairly discriminatory because the reduction diminishes the disparity in the Exchange's fees for various co-location power options. This results in a more competitive cost structure for the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other trading venues. These competitive forces help to ensure that NASDAQ's fees are reasonable, equitably allocated, and not unfairly discriminatory since market participants can largely avoid fees to which they object by changing their operating venue.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ is reducing fees through this proposed rule change, thereby enhancing the competitiveness of its co-location offering.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>7</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2012-054 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-NASDAQ-2012-054. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 the Exchange. 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-NASDAQ-2012-054 and should be submitted on or before June 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-66941; File No. SR-CME-2012-06]**

### **Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Order Approving Proposed Rule Change To Amend Rules Related to Credit Default Swap Guaranty Fund Allocations, End-of-Day Pricing Procedures, Daily Submission Deadlines, Holiday Accrual Processing, and the Price Alignment Interest Payment Timeline**

May 8, 2012.

#### **I. Introduction**

On March 9, 2012, Chicago Mercantile Exchange ("CME") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-CME-2012-06 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> The proposed rule change was published for comment in the **Federal Register** on March 29, 2012.<sup>3</sup> The Commission received no comment letters regarding this proposal. For the

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Release No. 34-66646 (March 22, 2012), 77 FR 19045 (March 29, 2012).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(a)(ii)[sic].

reasons discussion below, the Commission is granting approval of the proposed rule change.

## II. Description

CME currently offers clearing services for certain credit default swap ("CDS") index products. CME proposes to amend certain of its rules that would generally affect its CDS clearing offering and to make corresponding amendments to certain sections of its Manual of Operations for CME Cleared Credit Default Swaps ("CDS Manual"). The rule amendments would modify CME's CDS guaranty fund allocation methodology, end-of-day pricing procedures, daily submission deadlines, holiday accrual processing, and the timeline for price alignment interest ("PAI") payment timeline.

The proposed changes to text in the CME rulebook would amend current requirements found in CME Rule 8H07.1 relating to the allocation of the CDS guaranty fund requirements among CDS clearing members. Currently, CME calculates its guaranty fund monthly and proportionally allocates to each CDS clearing member a guaranty fund requirement based on the CDS clearing member's 90-day trailing average of its potential residual loss and 90-day trailing average of its gross notional open interest outstanding at CME. CME is proposing to change the measurement period from 90 days to 30 days so that a CME clearing member's CDS guaranty fund requirement more quickly react to the CDS clearing member's current activity and to align the measurement period with the frequency of CDS guaranty fund calculations.

The proposed changes to the text of the CDS Manual would modify end-of-day pricing procedures including procedures for CDS price submissions, crossing, and auction procedures that CME uses to arrive at the settlement price for CDS contracts. Currently, CME requires CDS clearing members to submit price levels for the full term structures of all indices and single-name reference entities by seniority, restructuring type, and currency eligible for clearing. If a CDS clearing member chooses to submit price levels on a cleared contract in which it does not hold open interest, CME hold that price submission as tradable if a cross occurs and the submitted instrument is selected pursuant to the auction process. However, under CME's current procedures, submitted price levels for non-cleared instruments are never actionable (*i.e.*, tradable). CME is proposing to change it CDS Manual to require CDS clearing members to submit price levels for all cleared contracts in

which they or their customers hold open interest. For indices where CDS clearing members are required to submit the full clearing eligible tenors of all indices, CME will only cross CDS clearing members on the tenors in which the CDS clearing members or their customers hold open interest. For single-name CDS, CME will require CDS clearing members to submit mid price levels for the full term structures for the 0, 0.5-, 1-, 2-, 3-, 4-, 5-, 7- and 10-year tenors. However, CME may cross the CDS clearing members on any single-name reference entity in which the CDS clearing members or their customer(s) hold open interest irrespective of tenor.

CME is also amending its CDS Manual to change (1) the daily submission deadlines for CDS, (2) the CDS holiday accrual processing, and (3) the PAI payment timeline. With respect to operations timelines and reports, CME would move up the trade submission deadline for current day trades from 7:59 p.m. ET to 6:59 p.m. ET. With respect to position management, money calculations, and collateral, the revisions to the CDS Manual would require on bank holidays in the country of which the swap is denominated (*e.g.*, Independence Day for U.S. Dollar denominated CDS contracts), accrual processing would be included in the processing for the next business day and would not occur on the relevant bank holiday. In addition, CME would calculate and pay PAI for CDS contracts on a daily basis as opposed to monthly.

## III. Discussion

Section 19(b)(2)(C) of the Act 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.<sup>4</sup> In particular, Section 17A(b)(3)(F)<sup>5</sup> of the Act requires, among other things, that the rules of a 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. By making CDS clearing members' guaranty fund requirements be based on relatively more recent histories, the proposed amended rule governing guaranty fund allocations should improve CME's ability to react to CDS market dynamics and thereby should help CME better assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. As

such, the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act. Also, the requirement that CDS clearing members submit pricing for all tenors of clearing-eligible indices and for the full term structure for single-name CDS should enhance CME's ability to derive end-of-day settlement prices. In addition, because the operational changes CME is proposing would generally require clearing members to make trade submissions more promptly, require CME to calculate price alignment more frequently, and clarify when price accrual processing occurs in the event of a bank holiday, such a change should promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions and therefore is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

## IV. Conclusion

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

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-CME-2012-06), be, and hereby is, approved.<sup>6</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66940; File No. SR-CME-2012-14]

### Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule Applicable to OTC S&P GSCI-ER Swaps Contracts

May 8, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>6</sup> 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).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>4</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>5</sup> 15 U.S.C. 78q-1(B)(3)(F).