credit amount vest with him or her immediately.

15. The bonus credit recapture provisions are necessary for the Life Company to offer the bonus credits and avoid anti-selection against it. It would be unfair to the Life Company to permit an owner to keep his or her bonus credits upon his or her exercise of the Contract's ''free look'' provision. Because no CDSC applies to the exercise of the ''free look'' provision, the owner could obtain a quick profit in the amount of the bonus credit at the Life Company's expense by exercising that right. Likewise, because no additional CDSC applies upon death of an owner (or annuitant) or where the CDSC is waived upon a surrender or withdrawal due to the owner's receipt of qualified extended medical care or the owner is diagnosed with a qualifying terminal illness, a death or this type of surrender or withdrawal shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at the Life Company's expense.

16. In the event of such profits to an owner or beneficiary, the Life Company could not recover the cost of granting the bonus credits. This is because the Life Company intends to recoup the costs of providing the bonus credits through the charges under the Contract, particularly the daily mortality and expense risk charge and the daily administrative charge. If the profits described above are permitted, an owner could take advantage of them, reducing the base from which the daily charges are deducted and greatly increasing the amount of bonus credits that the Life Company must provide. Therefore, the recapture provisions are a price of offering the bonus credits. The Life Company simply cannot offer the proposed bonus credits without the ability to recapture those credits in the limited circumstances described herein.

17. Applicants state that the Commission's authority under Section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, the Life Company's successors in interest, Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder with respect to the Contracts. The exemption of these classes of persons is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to persons that in all material respects are the same as the Applicants. The Commission has previously granted exemptions to classes of similarly situated persons in various contexts and in a wide variety of circumstances, including class exemptions for recapturing bonus credits under variable annuity contracts.

18. Applicants represent that any contracts in the future will be substantially similar in all material respects to the Contracts, but particularly with respect to the bonus credits and recapture of bonus credits, and that each factual statement and representation about the bonus credit provisions will be equally true of any Contracts in the future. Applicants also represent that each material representation made by them about the Account and DSL will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in the application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be a FINRA member.

19. For the reasons above, Applicants submit that the bonus credit provisions involve none of the abuses to which provision of the Act and rules thereunder are directed. The owner will always retain the investment experience attributable to the bonus credit and will retain the principal amount in all cases except under the circumstances described herein. Further, the Life Company should be able to recapture such bonus credits to limit potential losses associated with such bonus credits.

Conclusion

Applicants submit that the exemptions requested are necessary or appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and consistent with and supported by Commission precedent. Applicants also submit, based on the analysis listed above, that the provisions for recapture of any bonus credit under the Contracts does not violate Section 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. The Applicants hereby request that the Commission issue an order pursuant to Section 6(c) of the Act to exempt the Applicants with respect to (1) the Contracts, (2) Future Accounts that support the Contracts, and (3) Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of the bonus credits (previously applied to premium payments) in the circumstances described above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5980 Filed 3–18–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59578; File No. S7–06–09]

Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request of Chicago Mercantile Exchange Inc. and Citadel Investment Group, L.L.C. Related to Central Clearing of Credit Default Swaps, and Request for Comments

March 13, 2009.

I. Introduction

In response to the recent turmoil in the financial markets, the Securities and Exchange Commission (''Commission'') has taken multiple actions to protect investors and ensure the integrity of the nation's securities markets.[1] Today the

[1] A nonexclusive list of the Commission's actions to stabilize financial markets during this credit crisis include: Adopting a package of measures to strengthen investor protections against naked short selling, including rules requiring a hard T+3 close-out, eliminating the options market maker exception of Regulation SHO, and expressly targeting fraud in short selling transactions (*See* Securities Exchange Act Release No. 58572 (September 17, 2008), 73 FR 54875 (September 23, 2008)); issuing an emergency order to enhance protections against naked short selling in the securities of primary dealers, Federal National Mortgage Association (''Fannie Mae''), and Federal Home Loan Mortgage Corporation (''Freddie Mac'') (*See* Securities Exchange Act Release No. 58166 (July 15, 2008), 73 FR 42379 (July 21, 2008)); taking temporary emergency action to ban short selling in financial securities (*See* Securities Exchange Act Release No. 58592 (September 18, 2008), 73 FR 55169 (September 24, 2008)); approving emergency rulemaking to ensure disclosure of short positions by hedge funds and other institutional money managers (*See* Securities Exchange Act Release No. 58591A (September 21, 2008), 73 FR 55557 (September 25, 2008)); proposing rules to strengthen the regulation of credit rating agencies and making the limits and purposes of credit ratings clearer to investors (*See* Securities Exchange Act Release No. 57967 (June 16, 2008), 73 FR 36212 (June 25, 2008); entering into a Memorandum of

Continued

Commission is taking further action designed to address concerns related to the market in credit default swaps (''CDS''). The over-the-counter (''OTC'') market for CDS has been a source of concerns to us and other financial regulators. These concerns include the systemic risk posed by CDS, highlighted by the possible inability of parties to meet their obligations as counterparties and the potential resulting adverse effects on other markets and the financial system.[2] Recent credit market events have demonstrated the seriousness of these risks in a CDS market operating without meaningful regulation, transparency,[3] or central counterparties (''CCPs'').[4] These events have emphasized the need for CCPs as mechanisms to help control such risks.[5] A CCP for CDS could be an important step in reducing the counterparty risks inherent in the CDS market, and thereby help mitigate potential systemic impacts. In November 2008, the President's Working Group on Financial Markets stated that the implementation of a CCP for CDS was a top priority[6] and, in furtherance of this recommendation, the Commission, the FRB and the Commodity Futures Trading Commission (''CFTC'') signed a Memorandum of Understanding[7] that establishes a framework for consultation and information sharing on issues related to CCPs for CDS. Given the continued uncertainty in this market, taking action to help foster the prompt development of CCPs, including granting conditional exemptions from certain provisions of the Federal securities laws, is in the public interest.

A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller under a CDS to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take positions in bonds or in segments of the debt market as represented by an index, or to capitalize on the volatility in credit spreads during times of economic uncertainty. In recent years, CDS market volumes have rapidly increased.[8] This growth has coincided with a significant rise in the types and number of entities participating in the CDS market.[9]

The Commission's authority over this OTC market for CDS is limited. Specifically, Section 3A of the Securities Exchange Act of 1934 (''Exchange Act'') limits the Commission's authority over swap agreements, as defined in Section 206A of the Gramm-Leach-Bliley Act.[10] For those CDS that are swap agreements, the exclusion from the definition of security in Section 3A of the Exchange Act, and related provisions, will continue to apply. The Commission's action today does not affect these CDS, and this Order does not apply to them. For those CDS that are not swap agreements (''non-excluded CDS''), the Commission's action today provides conditional exemptions from certain requirements of the Exchange Act.

The Commission believes that using well-regulated CCPs to clear transactions in CDS would help promote efficiency and reduce risk in the CDS market and among its participants. These benefits could be particularly significant in times of market stress, as CCPs would mitigate the potential for a market participant's failure to destabilize other market participants, and reduce the effects of misinformation and rumors. CCP-maintained records of CDS transactions would also aid the Commission's efforts to prevent and detect fraud and other abusive market practices.

A well-regulated CCP also would address concerns about counterparty risk by substituting the creditworthiness and liquidity of the CCP for the creditworthiness and liquidity of the counterparties to a CDS. In the absence of a CCP, participants in the OTC CDS market must carefully manage their counterparty risks because the default by a counterparty can render worthless, and payment delay can reduce the usefulness of, the credit protection that has been bought by a CDS purchaser. CDS participants currently attempt to manage counterparty risk by carefully selecting and monitoring their counterparties, entering into legal agreements that permit them to net gains and losses across contracts with a defaulting counterparty, and often requiring counterparty exposures to be collateralized.[11] A CCP could allow participants to avoid these risks specific to individual counterparties because a CCP ''novates'' bilateral trades by entering into separate contractual arrangements with both counterparties—becoming buyer to one

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Understanding with the Board of Governors of the Federal Reserve System (''FRB'') to make sure key Federal financial regulators share information and coordinate regulatory activities in important areas of common interest (*See* Memorandum of Understanding Between the U.S. Securities and Exchange Commission and the Board of Governors of the Federal Reserve System Regarding Coordination and Information Sharing in Areas of Common Regulatory and Supervisory Interest (July 7, 2008), *http://www.sec.gov/news/press/2008/2008–134_mou.pdf).*

[2] In addition to the potential systemic risks that CDS pose to financial stability, we are concerned about other potential risks in this market, including operational risks, risks relating to manipulation and fraud, and regulatory arbitrage risks.

[3] *See* Policy Objectives for the OTC Derivatives Market, The President's Working Group on Financial Markets, November 14, 2008, available at *http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf* (''Public reporting of prices, trading volumes and aggregate open interest should be required to increase market transparency for participants and the public.'').

[4] *See* The Role of Credit Derivatives in the U.S. Economy Before the H. Agric. Comm., 110th Cong. (2008) (Statement of Erik Sirri, Director of the Division of Trading and Markets, Commission).

[5] *See id.*

[6] *See* Policy Objectives for the OTC Derivatives Market, The President's Working Group on Financial Markets (November 14, 2008), *http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf. See also* Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets (March 13, 2008), *http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf;* Progress Update on March Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets (October 2008), *http://www.treas.gov/press/releases/reports/q4progress%20update.pdf.*

[7] *See* Memorandum of Understanding Between the Board of Governors of the Federal Reserve System, the U.S. Commodity Futures Trading Commission and the U.S. Securities and Exchange Commission Regarding Central Counterparties for Credit Default Swaps (November 14, 2008), *http://www.treas.gov/press/releases/reports/finalmou.pdf.*

[8] *See* Semiannual OTC derivatives statistics at end-December 2007, Bank for International Settlements (''BIS''), available at *http:/www.bis.org/statistics/otcder/dt1920a.pdf.*

[9] CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant with their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms, and hedge funds have entered the CDS market.

[10] 15 U.S.C. 78c–1. Section 3A excludes both a non-security-based and a security-based swap agreement from the definition of ''security'' under Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a ''swap agreement'' as ''any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act * * *) * * * the material terms of which (other than price and quantity) are subject to individual negotiation.'' 15 U.S.C. 78c note.

[11] *See generally* R. Bliss and C. Papathanassiou, ''Derivatives clearing, central counterparties and novation: The economic implications'' (March 8, 2006), at 6. *See also* ''New Developments in Clearing and Settlement Arrangements for OTC Derivatives,'' Committee on Payment and Settlement Systems, BIS, at 25 (March 2007), available at *http://www.bis.org/pub/cpss77.pdf;* ''Reducing Risks and Improving Oversight in the OTC Credit Derivatives Market,'' Before the Sen. Subcomm. On Secs., Ins. and Investments, 110th Cong. (2008) (Statement of Patrick Parkinson, Deputy Director, Division of Research and Statistics, FRB).

and seller to the other.[12] Through novation, it is the CCP that assumes counterparty risks.

For this reason, a CCP for CDS would contribute generally to the goal of market stability. As part of its risk management, a CCP may subject novated contracts to initial and variation margin requirements and establish a clearing fund. The CCP also may implement a loss-sharing arrangement among its participants to respond to a participant insolvency or default.

A CCP would also reduce CDS risks through multilateral netting of trades.[13] Trades cleared through a CCP would permit market participants to accept the best bid or offer from a dealer in the OTC market with very brief exposure to the creditworthiness of the dealer. In addition, by allowing netting of positions in similar instruments, and netting of gains and losses across different instruments, a CCP would reduce redundant notional exposures and promote the more efficient use of resources for monitoring and managing CDS positions. Through uniform margining and other risk controls, including controls on market-wide concentrations that cannot be implemented effectively when counterparty risk management is decentralized, a CCP can help prevent a single market participant's failure from destabilizing other market participants and, ultimately, the broader financial system.

In this context, The Chicago Mercantile Exchange Inc. (''CME'') and Citadel Investment Group, L.L.C. (''Citadel'') have requested that the Commission grant exemptions from certain requirements under the Exchange Act with respect to their proposed activities in clearing and settling certain CDS, as well as the proposed activities of certain other persons, as described below.[14]

Based on the facts that CME and Citadel have presented and the representations they have made,[15] and for the reasons discussed in this Order, the Commission temporarily is exempting, subject to certain conditions, CME 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 certain non-excluded CDS transactions. The Commission also temporarily is exempting eligible contract participants and others from certain Exchange Act requirements with respect to non-excluded CDS cleared by CME. The Commission's exemptions are temporary and will expire on December 14, 2009. To facilitate the operation of one or more CCPs for the CDS market, the Commission has also approved interim final temporary rules providing exemptions under the Securities Act of 1933 and the Exchange Act for non-excluded CDS.[16] Finally, the Commission has provided temporary exemptions in connection with Sections 5 and 6 of the Exchange Act for transactions in non-excluded CDS.[17]

II. Discussion

A. Description of CME and Citadel's Proposal

The exemptive request by CME and Citadel describes how their proposed arrangements for central clearing of CDS would operate, and makes representations about the safeguards associated with those arrangements, as described below:

1. CME Organization

CME Group Inc. (''CME Group''), a Delaware stock corporation, is the holding company for CME, as well as Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc., Commodity Exchange, Inc. and their subsidiaries.

CME is a designated contract market (''DCM''), regulated by the CFTC, for the trading of futures and options on futures contracts. In addition, CME Group operates its own clearing house, which is a division of CME. The CME clearing house is a derivates clearing organization (''DCO'') regulated by the CFTC. The clearing house clears, settles and guarantees the performance of all transactions matched through the execution facilities and on third party exchanges for which CME Group provides clearing services. The clearing house operates with the oversight of the Clearing House Risk Committee (''CHRC''). The CHRC is made up of a group of clearing member representatives who represent the interests of the clearing house as well as clearing members of CME Group.

CME is required to comply with the eighteen CFTC Core Principles applicable to registered DCMs and the fourteen CFTC Core Principles applicable to DCOs.[18] The CFTC conducts regular audits or risk reviews of CME with respect to these Core Principles. CME is registered and in good standing with the CFTC. In addition, CME is notice registered with the Commission as a special purpose national securities exchange for the purpose of trading securities futures products. In the U.K., CME is a Recognised Overseas Investment Exchange and a Recognised Overseas Clearing House, subject to regulation by the U.K. Financial Services Authority.

2. CME Central Counterparty Services for CDS

CME as part of its clearing services would be interposed as central counterparty for transactions in Cleared CDS (as defined below).[19] CME would provide clearing and settlement services for transactions in Cleared CDS submitted to or executed on the CMDX platform.[20] CME would also accept for clearing directly from participants trades in Cleared CDS that are not executed on or processed through CMDX.

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[12] ''Novation'' is a ''process through which the original obligation between a buyer and seller is discharged through the substitution of the CCP as seller to buyer and buyer to seller, creating two new contracts.'' Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissioners, Recommendations for Central Counterparties (November 2004) at 66.

[13] *See* ''New Developments in Clearing and Settlement Arrangements for OTC Derivatives,'' *supra* note 11, at 25. Multilateral netting of trades would permit multiple counterparties to offset their open transaction exposure through the CCP, spreading credit risk across all participants in the clearing system and more effectively diffusing the risk of a counterparty's default than could be accomplished by bilateral netting alone.

[14] *See* Letter from Adam Cooper, Citadel Investment Group, L.L.C. and Ann K. Shuman, Chicago Mercantile Exchange, Inc., to Elizabeth M. Murphy, Secretary, Commission, March 12 , 2008.

[15] *See id.* The exemptions we are granting today are based on representations made by CME and Citadel. We recognize, however, that there could be legal uncertainty in the event that one or more of the underlying representations were to become inaccurate. Accordingly, if any of these exemptions were to become unavailable by reason of an underlying representation no longer being materially accurate, the legal status of existing open positions in non-excluded CDS associated with persons subject to those unavailable exemptions would remain unchanged, but no new positions could be established pursuant to the exemptions until all of the underlying representations were again accurate.

[16] *See* Securities Act Release No. 8999 (January 14, 2009).

[17] *See* Securities Exchange Act Release No. 59165 (December 24, 2008).

[18] The DCM and DCO Core Principles are set forth in 7 U.S.C. 7(b), 7a–1(c)(2)(A).

[19] *See* note 29, *infra.*

[20] Citadel and CME have entered into a joint venture (to be named ''CMDX'') to provide a trading and clearing solution for CDS. CMDX trading, booking and migration services would be available only to persons that satisfy the definition of an ''eligible contract participant'' in Section 1a(12) of the Commodity Exchange Act (''CEA'') (other than paragraph (C) thereof). In addition, each participant on the CMDX platform must be a clearing member of CME or have a clearing relationship with a CME clearing member that agrees to assume responsibility for the participant's CDS contracts cleared by CME. Initially, CMDX would offer CDS that mirror as closely as possible the terms of existing OTC CDS. The coupons and maturities would be standardized to the extent necessary to permit centralized clearing.

Specifically, CME would accept for clearing (i) trades that are matched on the CMDX platform, (ii) pre-existing non-standard trades that are submitted to clearing through the CMDX migration facility, and (iii) new bilaterally-executed trades in standardized products that are submitted to CME for clearing directly by the participants (using CME's Clearing 360™ API or similar facility that CME makes available).[21]

The trades submitted to or executed on the CMDX platform would be processed straight-through to CME for clearing and settlement. CME clearing and settlement of Cleared CDS would operate using the established systems, procedures and financial safeguards package that stand behind trading in CME's primary futures market, and such activities would be subject to CFTC oversight of risk management and collateralization procedures. CME Rulebook Chapter 8–F sets forth the rules governing clearing and settlement of all products, instruments, and contracts in OTC derivatives, including but not limited to CDS contracts, swaps and forward rate agreements that the CME clearinghouse has designated as eligible for clearing.

3. CME Risk Management

CME clearing members that are broker-dealers or futures commission merchants maintain capital and liquidity in accordance with relevant SEC and CFTC rules and regulations. In addition, CME has requirements for minimum capital contribution, contribution to the guaranty fund based on risk factors, maintenance margin, and mark to market with immediate payment of losses applicable to clearing member firms.

CME has adopted a risk-based capital requirement. Capital requirements are monitored by CME's Audit Department and vary to reflect the risk of each clearing member's positions as well as CME's assessment of each clearing member's internal controls, risk management policies and back office operations.

Clearing members also would have tools to manage appropriate requirements with respect to their customers. CME Rule 982 requires clearing members to establish written risk management policies and procedures, including monitoring the risks assumed by specific customers. To facilitate such controls with respect to CDS transactions, CME's clearing systems include functionality that permits clearing members to register customer accounts and specify customer credit limits.

CME would extend its current monitoring procedures to Cleared CDS cleared by CME. CME would monitor for and investigate unusual trading patterns or volumes. Customer account reporting would allow CME to view the positions held by individual accounts. The positions of each account would be analyzed throughout the day to monitor any accounts that may have significant losses due to market moves. In addition, significant changes in positions from day to day would be analyzed and reported to CME clearing house senior management.

CME would include stress testing of the different CDS clearing house margin factors to capture moves beyond the one-day 99% standard on the macro and sector moves and the five-day 99% standard for the idiosyncratic shocks. This would be considered in designing the financial safeguards package, adding concentration types of margining and routine stress testing. Also, the CDS clearing house margin factor parameters would be reviewed daily as a back-testing procedure to ensure the parameters are providing the desired coverage. CME would also review on a daily basis the margin collected by CME on CDS portfolios and compare those amounts to next-day market moves so that actual portfolio effects can be determined and gauged against the margin coverage. In addition, CME would evaluate the concentration of CDS positions beyond the margin factors and compare them against overall open interest and liquidity in the CDS market.

CME will extend its scenario based stress testing techniques for concentration margining to Cleared CDS. The concentration stress test results will be evaluated relative to excess adjusted net capital for each segregated pool. If the hypothetical losses exceed the excess adjusted net capital for a clearing member's segregated pool, then an additional margin charge will be applied to the clearing member's position. The additional margin charge is calculated based on the magnitude of the hypothetical losses in excess of the clearing member's excess adjusted net capital.

CME determines the acceptability of different collateral types and determines appropriate haircuts.[22] Collateral requirements for Cleared CDS would endeavor to reflect the specific risks of Cleared CDS, including jump-to-default and the consequences of a liquidity event caused by the defaults.

4. Member Default

If a clearing member is troubled (*i.e.*, it fails to meet minimum financial requirements or its financial or operational condition may jeopardize the integrity of the CME, or negatively impact the financial markets), the CME may take action pursuant to Rules 974 (Failure To Meet Minimum Financial Requirements) or 975 (Emergency Financial Conditions). In the event of a default by a clearing member of CME, the process would be governed by applicable CME Rules.[23]

In the event of a member default, CME may access its financial safeguard package as necessary. CME's financial safeguards package is a combination of each clearing member's collateral on deposit to support its positions, the collateral of its customers to support their positions, CME surplus funds, security deposits and assessment powers.[24]

5. Customer Rules and Other Requirements

Prior to issuance of an order from the CFTC under Section 4d of the CEA (''4d order''), all Cleared CDS submitted to CME for clearing for the account of a clearing member's customer must be assigned and held in an account subject to CFTC Regulation 30.7.[25] Regulation

[21] Non-standard trades that are migrated to CME would ultimately be converted to a standard, centrally cleared contract. Migration may only occur if both counterparties to a trade agree to the process and both are clearing members or have the appropriate relationship with a clearing member. CMDX would also supply participants a data file of the original bilateral positions that were accepted into clearing via the migration process, so that participants may send appropriate exit records to the DTCC Trade Information Warehouse.

[22] A list of acceptable collateral and applicable haircuts is available at *www.cme.com.*

[23] *See, e.g.*, CME Rulebook Chapter 8–F (Over-the-Counter Derivative Clearing), including but not limited to Rules 8F06 (Clearing Member Default), 8F07 (Security Deposit) and 8F13 (Insolvency and Liquidation). Chapter 8-F further incorporates the general CME Rules relating to defaults, including but not limited to Rules 913 (Withdrawal From Clearing Membership), 974 (Failure To Meet Minimum Financial Requirements), 975 (Emergency Financial Conditions), 976 (Suspension of Clearing Members), 978 (Open Trades of Suspended Clearing Members), and 979 (Suspended or Expelled Clearing Members).

[24] CME indicates that excluding collateral supporting open positions, which total approximately $116 billion, the total financial safeguards package is nearly $7 billion, comprised of: (1) CME surplus funds of $57 million; (2) clearing member security deposits of approximately $1.751 billion; and (3) assessment powers of approximately $4.816 billion (as of December 31, 2008). Clearing members that clear Cleared CDS would be subject to an additional $5 million security deposit requirement. Furthermore, the calculation of that portion of a clearing member's security deposit that is related to the risk of its CDS position would be scaled upward by a factor of three.

[25] 17 CFR 30.7.

30.7 requires that customer positions and property be separately held and accounted for from the positions and property of the futures commission merchant, and that customer property be deposited under an account name that clearly identifies it as customer property. CME Rule 8F03 reiterates that ''[a]ll collateral deposited as performance bond to support positions in such Regulation § 30.7 account and all positions, collateral or cash in such account shall be segregated from the Clearing Member's proprietary account.''

Upon the issuance of a 4d order from the CFTC, the segregation and protection of customer funds and property would be controlled by Section 4d of the CEA [26] and the regulations pertinent thereto; all funds and property received from customers of futures commission merchants in connection with purchasing, selling or holding CDS positions would be subject to the requirements of CFTC Regulation 1.20, *et seq.* promulgated under Section 4d. This regulation would apply to the purchasing, selling, and holding of CDS positions. This regulation would require that customer positions and property be separately accounted for and segregated from the positions and property of the futures commission merchant. Customer property will be deposited under an account name that clearly identifies it as such and shows it is appropriately segregated as required by the CEA and Regulation 1.20, *et seq.*

In addition, customer margin requirements for a broker-dealer are generally set by the broker-dealer's self-regulatory organizations (*e.g.*, the Financial Industry Regulatory Authority, commonly referred to as ''FINRA''). One purpose for customer margin requirements is to assure that broker-dealers collect sufficient margin from customers to protect the broker-dealer against the event that an adverse price move causes a customer default, leaving the broker-dealer with the responsibility for the transaction. FINRA intends to amend its customer margin rule to include margin requirements for Cleared CDS.[27]

B. Temporary Conditional Exemption From Clearing Agency Registration Requirement

Section 17A of the Exchange Act sets forth the framework for the regulation and operation of the U.S. clearance and settlement system, including CCPs. Specifically, Section 17A directs the Commission to use its authority to promote enumerated Congressional objectives and to facilitate the development of a national clearance and settlement system for securities transactions. Absent an exemption, a CCP that novates trades of non-excluded CDS that are securities and generates money and settlement obligations for participants is required to register with the Commission as a clearing agency.

Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[28]

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant an exemption until December 14, 2009 to CME from Section 17A of the Exchange Act, solely to perform the functions of a clearing agency for Cleared CDS,[29] subject to the conditions discussed below.

Our action today balances the aim of facilitating the prompt establishment of CME as a CCP for non-excluded CDS transactions—which should help reduce systemic risks during a period of extreme turmoil in the U.S. and global financial markets—with ensuring that important elements of Commission oversight are applied to the non-excluded CDS market. In doing so, we are mindful that applying the full scope of the Exchange Act to transactions involving non-excluded CDS could deter the prompt establishment of CME as a CCP to settle those transactions.

While we are acting so that the prompt establishment of CME as a CCP for non-excluded CDS will not be delayed by the need to apply the full scope of Exchange Act Section 17A's requirements that govern clearing agencies, the relief we are providing is temporary and conditional. The limited duration of the exemptions will permit the Commission to gain more direct experience with the non-excluded CDS market after CME becomes operational, giving the Commission the ability to oversee the development of the centrally cleared non-excluded CDS market as it evolves. During the exemptive period, the Commission will closely monitor the impact of the CCPs on the CDS market. In particular, the Commission will seek to assure itself that the CCPs do not act in anticompetitive manner or indirectly facilitate anticompetitive behavior with respect to fees charged to members, the dissemination of market data and the access to clearing services by independent CDS exchanges or CDS trading platforms. The Commission will take that experience into account in future actions.

Moreover, this temporary exemption in part is based on CME's representation that it meets the standards set forth in the Committee on Payment and Settlement Systems (''CPSS'') and International Organization of Securities Commissions (''IOSCO'') report entitled: *Recommendation for Central Counterparties* (''RCCP'').[30] The RCCP establishes a framework that requires a CCP to have: (i) The ability to facilitate the prompt and accurate clearance and settlement of CDS transactions and to safeguard its users' assets; and (ii) sound risk management, including the ability to appropriately determine and collect clearing fund and monitor its users' trading. This framework is generally

[26] 7 U.S.C. 6d.

[27] *See* SR–FINRA–2009–012, available at *http://www.finra.org/Industry/Regulation/RuleFilings/2009/P118121.*

[28] 15 U.S.C. 78mm.

[29] For purposes of this exemption, and the other exemptions addressed in this Order, ''Cleared CDS'' means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to CME, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which: (1) The reference entity, the issuer of the reference security, or the reference security is one of the following: (i) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; (ii) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States; (iii) a foreign sovereign debt security; (iv) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or (v) an asset-backed security issued or guaranteed by the Fannie Mae, the Freddie Mac, or the Government National Mortgage Association (''Ginnie Mae''); or (2) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (1). As discussed above, the Commission's action today does not affect CDS that are swap agreements under Section 206A of the Gramm-Leach-Bliley Act. *See* text at note 10, *supra.*

[30] The RCCP was drafted by a joint task force (''Task Force'') composed of representative members of IOSCO and CPSS and published in November 2004. The Task Force consisted of securities regulators and central bankers from 19 countries and the European Union. The U.S. representatives on the Task Force included staff from the Commission, the FRB, and the CFTC.

consistent with the requirements of Section 17A of the Exchange Act.

In addition, this Order is designed to assure that—as CME and Citadel have represented—information will be available to market participants about the terms of the CDS cleared by CME, the creditworthiness of CME or any guarantor, and the clearing and settlement process for the CDS. Moreover, to be within the definition of Cleared CDS for purposes of this exemption (as well as the other exemptions granted through this Order), a CDS may only involve a reference entity, a reference security, an issuer of a reference security, or a reference index that satisfies certain conditions relating to the availability of information about such persons or securities. For non-excluded CDS that are index-based, the definition provides that at least 80 percent of the weighting of the index must be comprised of reference entities, issuers of a reference security, or reference securities that satisfy the information conditions. The definition does not prescribe the type of financial information that must be available nor the location of the particular information, recognizing that eligible contract participants have access to information about reference entities and reference securities through multiple sources. The Commission believes, however, that it is important in the CDS market, as in the market for securities generally, that parties to transactions should have access to financial information that would allow them to appropriately evaluate the risks relating to a particular investment and make more informed investment decisions.[31] Such information availability also will assist CME and the buyers and sellers in valuing their Cleared CDS and their counterparty exposures. As a result of the Commission's actions today, the Commission believes that information should be available for market participants to be able to make informed investment decisions, and value and evaluate their Cleared CDS and their counterparty exposures.

This temporary exemption is subject to a number of conditions that are designed to enable Commission staff to monitor CME's clearance and settlement of CDS transactions and help reduce risk in the CDS market. These conditions require that CME: (i) Make available on its Web site its annual audited financial statements; (ii) preserve records of all activities related to the business of CME as a CCP for Cleared CDS for at least five years (in an easily accessible place for the first two years); (iii) supply information relating to its Cleared CDS clearance and settlement services [32] to the Commission and provide access to the Commission to conduct on-site inspections of facilities and records related to its Cleared CDS clearance and settlement services and will provide the Commission access to its personnel to answer reasonable questions during any such inspections; [33] (iv) notify the Commission about material disciplinary actions taken against CME clearing members with respect to Cleared CDS clearance and settlement services, and about the involuntary termination of the membership of an entity using those services; (v) notify the Commission of all changes to rules as defined under the CFTC rules, fees, and any other material events affecting its Cleared CDS clearance and settlement services; (vi) provide the Commission with reports prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements [34] and its annual audited financial statements prepared by independent audit personnel; (vii) report all significant systems outages to the Commission; and (viii) not materially change its methodology for determining Cleared CDS margin levels without prior written approval from the Commission, and from FINRA with respect to customer margin requirements that would apply to broker-dealers.

In addition, this relief is conditioned on CME, directly or indirectly, making available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that CME may establish to calculate mark-to-market margin requirements for CME participants; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by CME. The Commission believes this is an appropriate condition for CME's exemption from registration as a clearing agency. In Section 11A of the Exchange Act, Congress found that ''[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.'' [35] The President's Working Group on Financial Markets has stated that increased transparency is a policy objective for the over-the-counter derivatives market,[36] which includes the market for CDS. The condition is designed to further this policy objective of both Congress and the President's Working Group by requiring CME to make useful pricing data available to the public on terms that are fair and reasonable and not unreasonably discriminatory. Congress adopted these standards for the distribution of data in Section 11A. The Commission long has applied the standards in the specific context of securities market data, and it anticipates that CME will distribute its data on terms that generally are consistent with the application of these standards to securities market data. For example, data distributors generally are required to treat subscribers equally and not grant special access, fees, or other privileges to favored customers of the distributor. Similarly, distributors must make their data feeds reasonably available to data vendors for those subscribers who wish to receive their data indirectly through a vendor rather than directly from the distributor. In addition, a distributor's attempt to tie data products that must be made available to the public with other products or services of the distributor would be inconsistent with the statutory requirements. The Commission carefully evaluates any type of

[31] The Commission notes the recommendations of the President's Working Group on Financial Markets regarding the informational needs and due diligence responsibilities of investors. *See* Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets, March 13, 2008, available at *http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf.*

[32] Clearance and settlement services would include services in association with CME's CMDX migration facility, as well as activities associated with margin services.

[33] The Commission will conduct routine examinations no more often than annually, although it may inspect more frequently for cause. Moreover, the Commission will limit the scope of such inspections to confirming compliance with the requirements set forth in this Order, including compliance with the securities laws applicable to CME's Cleared CDS business and operations. The Commission will make reasonable efforts to coordinate any inspections with the CFTC or other regulatory bodies with jurisdiction in order to conduct joint inspections where possible.

[34] *See* Automated Systems of Self-Regulatory Organization, Exchange Act Release No. 27445 (November 16, 1989), File No. S7–29–89, and Automated Systems of Self-Regulatory Organization (II), Exchange Act Release No. 29185 (May 9, 1991), File No. S7–12–91.

[35] 15 U.S.C. 78k–1(a)(1)(C)(iii). *See also* 15 U.S.C. 78k–1(a)(1)(D).

[36] *See* President's Working Group on Financial Markets, Policy Objectives for the OTC Derivatives Market (November 14, 2008), available at *http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf* (''Public reporting of prices, trading volumes and aggregate open interest should be required to increase market transparency for participants and the public.'').

discrimination with respect to subscribers and vendors to assess whether there is a reasonable basis for the discrimination given, among other things, the Exchange Act objective of promoting price transparency. Moreover, preventing unreasonable discrimination is a practical means to promote fair and reasonable terms for data distribution because distributors are more likely to act appropriately when the terms applicable to the broader public also must apply to any favored classes of customers.

As a CCP, CME will collect and process information about CDS transactions and positions from all of its participants. With this information, a CCP will, among other things, calculate and disseminate current values for open positions for the purpose of setting appropriate margin levels. The availability of such information can improve fairness, efficiency, and competitiveness of the market—all of which enhance investor protection and facilitate capital formation. Moreover, with pricing and valuation information relating to Cleared CDS, market participants would be able to derive information about underlying securities and indexes. This may improve the efficiency and effectiveness of the securities markets by allowing investors to better understand credit conditions generally.

C. Temporary General Exemption for CME and Certain Eligible Contract Participants

Applying the full panoply of Exchange Act requirements to participants in transactions in non-excluded CDS likely would deter some participants from using CCPs to clear CDS transactions. At the same time, it is important that the antifraud provisions of the Exchange Act apply to transactions in non-excluded CDS; indeed, OTC transactions subject to individual negotiation that qualify as security-based swap agreements already are subject to these antifraud provisions.[37]

We thus believe that it is appropriate in the public interest and consistent with the protection of investors temporarily to apply substantially the same framework to transactions by market participants in non-excluded CDS that applies to transactions in security-based swap agreements. Applying substantially the same set of requirements to participants in transactions in non-excluded CDS as apply to participants in OTC CDS transactions will avoid deterring market participants from promptly using CCPs, which would detract from the potential benefits of central clearing.

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant an exemption until December 14, 2009 from certain requirements under the Exchange Act. This temporary exemption applies to CME and to certain eligible contract participants [38] other than: Eligible contract participants that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons; [39] eligible contract participants that are self-regulatory organizations; or eligible contract participants that are registered brokers or dealers).[40]

Under this temporary exemption, and solely with respect to Cleared CDS, these persons generally are exempt from provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. Those persons thus would still be subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements.[41] In addition, all provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions would remain applicable.[42] In this way, the temporary exemption would apply the same Exchange Act requirements in connection with non-excluded CDS as apply in connection with OTC credit default swaps.

This temporary exemption, however, does not extend to Sections 5 and 6 of the Exchange Act. The Commission separately issued a conditional exemption from these provisions to all broker-dealers and exchanges.[43] This temporary exemption also does not extend to Section 17A of the Exchange Act; instead, CME is exempt from registration as a clearing agency under the conditions discussed above. In addition, this exemption does not apply to Exchange Act Sections 12, 13, 14, 15(d), and 16; [44] eligible contract participants and other persons instead should refer to the interim final temporary rules issued by the

[37] While Section 3A of the Exchange Act excludes ''swap agreements'' from the definition of ''security,'' certain antifraud and insider trading provisions under the Exchange Act explicitly apply to security-based swap agreements. *See* (a) paragraphs (2) through (5) of Section 9(a), 15 U.S.C. 78i(a), prohibiting the manipulation of security prices; (b) Section 10(b), 15 U.S.C. 78j(b), and underlying rules prohibiting fraud, manipulation or insider trading (but not prophylactic reporting or recordkeeping requirements); (c) Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices; (d) Sections 16(a) and (b), 15 U.S.C. 78p(a) and (b), which address disclosure by directors, officers and principal stockholders, and short-swing trading by those persons, and rules with respect to reporting requirements under Section 16(a); (e) Section 20(d), 15 U.S.C. 78t(d), providing for antifraud liability in connection with certain derivative transactions; and (f) Section 21A(a)(1), 15 U.S.C. 78u–1(a)(1), related to the Commission's authority to impose civil penalties for insider trading violations.

''Security-based swap agreement'' is defined in Section 206B of the Gramm-Leach-Bliley Act as a swap agreement in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

[38] This exemption in general applies to eligible contract participants, as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order, other than persons that are eligible contract participants under paragraph (C) of that section.

[39] Solely for purposes of this requirement, an eligible contract participant would not be viewed as receiving or holding funds or securities for purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons, if the other persons involved in the transaction would not be considered ''customers'' of the eligible contract participant in a parallel manner when certain persons would not be considered ''customers'' of a broker-dealer under Exchange Act Rule 15c3–3(a)(1). For these purposes, and for the purpose of the definition of ''Cleared CDS,'' the terms ''purchasing'' and ''selling'' mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing the rights or obligations under, a Cleared CDS, as the context may require. This is consistent with the meaning of the terms ''purchase'' or ''sale'' under the Exchange Act in the context of security-based swap agreements. *See* Exchange Act Section 3A(b)(4).

A separate temporary conditional exemption addresses members of CME that hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. *See* Part II.D, *infra*.

[40] A separate temporary exemption addresses the Cleared CDS activities of registered-broker-dealers. *See* Part II.E, *infra*. Solely for purposes of this Order, a registered broker-dealer, or a broker or dealer registered under Section 15(b) of the Exchange Act, does not refer to someone that would otherwise be required to register as a broker or dealer solely as a result of activities in Cleared CDS in compliance with this Order.

[41] *See* note 37, *supra*.

[42] Thus, for example, the Commission retains the ability to investigate potential violations and bring enforcement actions in the Federal courts and administrative proceedings, and to seek the full panoply of remedies available in such cases.

[43] *See* note 17, *supra*. A national securities exchange that effects transactions in Cleared CDS would continue to be required to comply with all requirements under the Exchange Act applicable to such transactions. A national securities exchange could form subsidiaries or affiliates that operate exchanges exempt under that order. Any subsidiary or affiliate of a registered exchange could not integrate, or otherwise link, the exempt CDS exchange with the registered exchange including the premises or property of such exchange for effecting or reporting a transaction without being considered a ''facility of the exchange.'' *See* Section 3(a)(2), 15 U.S.C. 78c(a)(2).

[44] 15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78p.

Commission. Finally, this temporary exemption does not extend to the Commission's administrative proceeding authority under Sections 15(b)(4) and (b)(6),[45] or to certain provisions related to government securities.[46]

D. Conditional Temporary General Exemption for Certain Clearing Members of CME

Absent an exception, persons that effect transactions in non-excluded CDS that are securities may be required to register as broker-dealers pursuant to Section 15(a)(1) of the Exchange Act.[47] Moreover, certain reporting and other requirements of the Exchange Act could apply to such persons, as broker-dealers, regardless of whether they are registered with the Commission.

It is consistent with our investor protection mandate to require that intermediaries in securities transactions that receive or hold funds and securities on behalf of others comply with standards that safeguard the interests of their customers. For example, registered broker-dealers are required to segregate assets held on behalf of customers from proprietary assets, because segregation will assist customers in recovering assets in the event the intermediary fails. To the extent that funds and securities are not segregated, they could be used by a participant to fund its own business and could be attached to satisfy debts of the participant were the participant to fail. Moreover, the maintenance of adequate capital and liquidity protects customers, CCPs and other market participants. Adequate books and records (including both transactional and position records) are necessary to facilitate day to day operations as well as to help resolve situations in which a participant fails and either a regulatory authority or receiver is forced to liquidate the firm. Appropriate records also are necessary to allow examiners to review for improper activities, such as insider trading or fraud.

At the same time, requiring intermediaries that receive or hold funds and securities on behalf of customers in connection with transactions in non-excluded CDS to register as broker-dealers may deter the use of CCPs in CDS transactions, to the detriment of the markets and market participants generally. Also, as noted above with regard to other eligible contract participants to non-excluded CDS transactions, immediately applying the panoply of Exchange Act requirements to centrally cleared transactions may deter the use of CCPs for CDS transactions.

Those factors argue in favor of flexibility in applying the requirements of the Exchange Act to these intermediaries. Along with those factors, in granting an exemption here we are particularly relying on the representation of CME that CME's rules alone or in combination with laws and regulations applicable to CME and its clearing members require that any CME clearing member that purchases, sells, or holds CDS positions for other persons, solely as they relate to CDS: (1) Must be registered with the CFTC as a futures commission merchant; (2) effectively segregates funds and securities of other persons (except positions held in proprietary accounts of the clearing member, which may include, for example, positions of employees or affiliates of the clearing member) that it holds in its custody or control for the purpose of purchasing, selling, or holding CDS positions; (3) maintains adequate capital and liquidity; and (4) maintains sufficient books and records to establish (a) that the CME clearing member is maintaining adequate capital and liquidity, and (b) separate ownership of the funds, securities, and positions it may hold for the purpose of purchasing, selling, or holding CDS positions for other persons and those it holds for its proprietary accounts.

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant a conditional exemption until December 14, 2009 from certain Exchange Act requirements. In general, we are providing a temporary exemption, subject to the conditions discussed below, to any CME clearing member registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act (''FCM'') (but that is not registered as a broker-dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)) that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling or holding Cleared CDS positions for other persons. Solely with respect to Cleared CDS, those members generally will be exempt from those provisions of the Exchange Act and the underlying rules and regulations that do not apply to security-based swap agreements.

As with the exemption discussed above that is applicable to CME and certain eligible contract participants, and for the same reasons, this exemption for CME clearing members that receive or hold funds and securities does not extend to Exchange Act provisions that explicitly apply in connection with security-based swap agreements,[48] or to related enforcement authority provisions.[49] As with the exemption discussed above, we also are not exempting those members from Sections 5, 6, 12(a) and (g), 13, 14, 15(b)(4), 15(b)(6), 15(d), 16 and 17A of the Exchange Act.[50]

This temporary exemption is subject to the member complying with conditions that are important for protecting customer funds and securities. Particularly, the member must be in material compliance with the rules of CME, and applicable laws and

[45] Exchange Act Sections 15(b)(4) and 15(b)(6), 15 U.S.C. 78o(b)(4) and (b)(6), grant the Commission authority to take action against broker-dealers and associated persons in certain situations. Accordingly, while this exemption generally extends to persons that act as inter-dealer brokers in the market for Cleared CDS and do not hold funds or securities for others, such inter-dealer brokers may be subject to actions under Sections 15(b)(4) and (b)(6) of the Exchange Act.

In addition, such inter-dealer brokers may be subject to actions under Exchange Act Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices. As noted above, Section 15(c)(1) explicitly applies to security-based swap agreements. Sections 15(b)(4), 15(b)(6) and 15(c)(1), of course, would not apply to persons subject to this exemption who do not act as broker-dealers or associated persons of broker-dealers.

[46] This exemption specifically does not extend to the Exchange Act provisions applicable to government securities, as set forth in Section 15C, 15 U.S.C. 78o–5, and its underlying rules and regulations; nor does the exemption extend to related definitions found at paragraphs (42) through (45) of Section 3(a), 15 U.S.C. 78c(a). The Commission does not have authority under Section 36 to issue exemptions in connection with those provisions. See Exchange Act Section 36(b), 15 U.S.C. 78mm(b).

[47] 15 U.S.C. 78o(a)(1). This section generally provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission.

Section 3(a)(4) of the Exchange Act generally defines a ''broker'' as ''any person engaged in the business of effecting transactions in securities for the account of others,'' but provides 11 exceptions for certain bank securities activities. 15 U.S.C. 78c(a)(4). Section 3(a)(5) of the Exchange Act generally defines a ''dealer'' as ''any person engaged in the business of buying and selling securities for his own account,'' but includes exceptions for certain bank activities. 15 U.S.C. 78c(a)(5). Exchange Act Section 3(a)(6) defines a ''bank'' as a bank or savings association that is directly supervised and examined by State or Federal banking authorities (with certain additional requirements for banks and savings associations that are not chartered by a Federal authority or a member of the Federal Reserve System). 15 U.S.C. 78c(a)(6).

[48] *See* note 37, *supra.*

[49] *See* note 42, *supra.*

[50] Nor are we exempting those members from provisions related to government securities, as discussed above.

regulations, relating to capital, liquidity, and segregation of customers' [51] funds and securities (and related books and records provisions) with respect to non-excluded CDS.[52] Also, to the extent that the member receives or holds funds or securities of U.S. eligible contract participants for the purpose of purchasing, selling, clearing, settling or holding non-excluded CDS positions for those persons, this exemption is predicated on the member satisfying the following condition: The member must segregate such funds and securities of U.S. customers from the member's own assets (*i.e.*, the member may not permit U.S. customers to ''opt out'' of applicable segregation requirements for such funds and securities even if regulations or laws would permit the person to ''opt out'').

E. Temporary General Exemption for Certain Registered Broker-Dealers Including Certain Broker-Dealer-FCMs

The temporary exemptions addressed above—with regard (i) to CME and certain eligible contract participants and (ii) to certain CME clearing members that receive or hold funds and securities of others—are not available to persons that are registered as broker-dealers with the Commission (other than those that are notice registered pursuant to Section 15(b)(11)).[53] The Exchange Act and its underlying rules and regulations require broker-dealers to comply with a number of obligations that are important to protecting investors and promoting market integrity. We are mindful of the need to avoid creating disincentives to the prompt use of CCPs, and we recognize that the factors discussed above suggest that the full panoply of Exchange Act requirements should not immediately be applied to registered broker-dealers that engage in transactions involving Cleared CDS. At the same time, we also are sensitive to the critical importance of certain broker-dealer requirements to promoting market integrity and protecting customers (including those broker-dealer customers that are not involved with CDS transactions).

This calls for balancing the facilitation of the development and prompt implementation of CCPs with the preservation of certain key investor protections. Pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant an exemption until December 14, 2009 from certain Exchange Act requirements. Consistent with the temporary exemptions discussed above, and solely with respect to Cleared CDS, we are exempting registered broker-dealers (including registered broker-dealers that are also FCMs (''BD–FCMs'')) in general from provisions of the Exchange Act and its underlying rules and regulations that do not apply to security-based swap agreements. As above, we are not excluding registered broker-dealers, including BD–FCMs, from Exchange Act provisions that explicitly apply in connection with security-based swap agreements or from related enforcement authority provisions.[54] As above, and for similar reasons, we are not exempting registered broker-dealers, including BD–FCMs, from: Sections 5, 6, 12(a) and (g), 13, 14, 15(b)(4), 15(b)(6), 15(d), 16 and 17A of the Exchange Act.[55]

Further we are not exempting registered broker-dealers from the following additional provisions under the Exchange Act: (1) Section 7(c),[56] which addresses the unlawful extension of credit by broker-dealers; (2) Section 15(c)(3),[57] which addresses the use of unlawful or manipulative devices by broker-dealers; (3) Section 17(a),[58] regarding broker-dealer obligations to make, keep and furnish information; (4) Section 17(b),[59] regarding broker-dealer records subject to examination; (5) Regulation T,[60] a Federal Reserve Board regulation regarding extension of credit by broker-dealers; (6) Exchange Act Rule 15c3–1, regarding broker-dealer net capital; (7) Exchange Act Rule 15c3–3, regarding broker-dealer reserves and custody of securities; (8) Exchange Act Rules 17a–3 through 17a–5, regarding records to be made and preserved by broker-dealers and reports to be made by broker-dealers; and (9) Exchange Act Rule 17a–13, regarding quarterly security counts to be made by certain exchange members and broker-dealers.[61] Registered broker-dealers should comply with these provisions in connection with their activities involving non-excluded CDS because these provisions are especially important to helping protect customer funds and securities, ensure proper credit practices and safeguard against fraud and abuse.[62]

However, CME clearing members that are BD–FCMs that holds customer funds and securities for the purpose of purchasing, selling, clearing, settling or holding CDS positions cleared by CME in a futures account (as that term is defined in Rule 15c3–3(a)(15) [17 CFR 240.15c3–3(a)(15)]) also shall be exempt from Exchange Act Rule 15c3–3, subject to the following conditions: (1) The CME clearing member shall be in material compliance with the rules of CME, and applicable laws and regulations, relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS; [63] (2) the CME clearing member shall segregate such funds and securities of U.S. customers from the CME clearing member's own assets (*i.e.*, the member may not permit U.S. customers to ''opt out'' of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to ''opt out''); and (3) the CME clearing member shall comply with the margin rules for Cleared CDS of the self-regulatory

[51] The term ''customer,'' solely for purposes of Part III(c) and (d), *infra*, and corresponding references in this Order, means a ''customer'' as defined under CFTC Regulation 1.3(k). 17 CFR 1.3(k).

[52] A member would not be ''in material compliance'' if it failed in any way to segregate customer funds and securities consistent with these rules, laws and regulations. In that circumstance, the member could not rely on this exemption.

[53] Exchange Act Section 15(b)(11) provides for notice registration of certain persons that effect transactions in security futures products. 15 U.S.C. 78o(b)(11).

[54] *See* notes 37 and 42, *supra.* As noted above, broker-dealers also would be subject to Section 15(c)(1) of the Exchange Act, which prohibits brokers and dealers from using manipulative or deceptive devices, because that provision explicitly applies in connection with security-based swap agreements. In addition, to the extent the Exchange Act and any rule or regulation thereunder imposes any other requirement on a broker-dealer with respect to security-based swap agreements (*e.g.*, requirements under Rule 17h-1T to maintain and preserve written policies, procedures, or systems concerning the broker or dealer's trading positions and risks, such as policies relating to restrictions or limitations on trading financial instruments or products), these requirements would continue to apply to broker-dealers' activities with respect to Cleared CDS.

[55] We also are not exempting those members from provisions related to government securities, as discussed above.

[56] 15 U.S.C. 78g(c).

[57] 15 U.S.C. 78o(c)(3).

[58] 15 U.S.C. 78q(a).

[59] 15 U.S.C. 78q(b).

[60] 12 CFR 220.1 *et seq.*

[61] Solely for purposes of this exemption, in addition to the general requirements under the referenced Exchange Act sections, registered broker-dealers shall only be subject to the enumerated rules under the referenced Exchange Act sections. Broker-dealers will, however, continue to be subject to applicable rules of self-regulatory organizations of which they are a member, including applicable margin rules.

[62] Indeed, Congress directed the Commission to promulgate broker-dealer financial responsibility rules, including rules regarding custody, the use of customer securities and the use of customers' deposits or credit balances, and regarding establishment of minimum financial requirements.

[63] *See* note 52, *supra.*

organization that is its designated examining authority [64] (*e.g.*, FINRA).

F. Solicitation of Comments

The Commission intends to monitor closely the development of the CDS market and intends to determine to what extent, if any, additional regulatory action may be necessary. For example, as circumstances warrant, certain conditions could be added, altered, or eliminated. Moreover, because these exemptions are temporary, the Commission will in the future consider whether they should be extended or allowed to expire. The Commission believes it would be prudent to solicit public comment on its action today, and on what action it should take with respect to the CDS market in the future. The Commission is soliciting public comment on all aspects of these exemptions, including:

1. Whether the length of this temporary exemption (until December 14, 2009) is appropriate. If not, what should the appropriate duration be?

2. Whether the conditions to these exemptions are appropriate. Why or why not? Should other conditions apply? Are any of the present conditions to the exemptions provided in this Order unnecessary? If so, please specify and explain why such conditions are not needed.

3. Whether CME ultimately should be required to register as a clearing agency under the Exchange Act. Why or why not?

4. Whether CME members that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling or holding non-excluded CDS positions for other persons ultimately should be required to register as broker-dealers? Why or why not?

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.* Please include File Number S7–06–09 on the subject line; or
- Use the Federal eRulemaking Portal *(http://www.regulations.gov/).* Follow the instructions for submitting comments.

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 S7–06–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/other.shtml).* Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

III. Conclusion

It is hereby ordered, pursuant to Section 36(a) of the Exchange Act, that, until December 14, 2009:

(a) Exemption from Section 17A of the Exchange Act.

The Chicago Mercantile Exchange Inc. (''CME'') shall be exempt from Section 17A of the Exchange Act solely to perform the functions of a clearing agency for Cleared CDS (as defined in paragraph (e) of this Order), subject to the following conditions:

(1) CME shall make available on its Web site its annual audited financial statements.

(2) CME shall keep and preserve records of all activities related to the business of CME as a central counterparty for Cleared CDS. These records shall be kept for at least five years and for the first two years shall be held in an easily accessible place.

(3) CME shall supply such information and periodic reports relating to its Cleared CDS clearance and settlement services as may be reasonably requested by the Commission. CME shall also provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), and records related to its Cleared CDS clearance and settlement services. CME will provide the Commission with access to its personnel to answer reasonable questions during any such inspections related to its Cleared CDS clearance and settlement services.

(4) CME shall notify the Commission, on a monthly basis, of any material disciplinary actions taken against any CME clearing members utilizing its Cleared CDS clearance and settlement services, including the denial of services, fines, or penalties. CME shall notify the Commission promptly when CME involuntarily terminates the membership of an entity that is utilizing CME's Cleared CDS clearance and settlement services. Both notifications shall describe the facts and circumstances that led to CME's disciplinary action.

(5) CME shall notify the Commission of all changes to rules as defined under the CFTC rules, fees, and any other material events affecting its Cleared CDS clearance and settlement services, including material changes to risk management models. In addition, CME will post any rule or fee changes on the CME Web site. CME shall provide the Commission with notice of all changes to its rules not less than one day prior to effectiveness or implementation of such rule changes or, in exigent circumstances, as promptly as reasonably practicable under the circumstances. Such notifications will not be deemed rule filings that require Commission approval.

(6) CME shall provide the Commission with annual reports and any associated field work concerning its Cleared CDS clearance and settlement services prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements. CME shall provide the Commission (beginning in its first year of operation) with its annual audited financial statements prepared by independent audit personnel for CME.

(7) CME shall report to the Commission all significant outages of clearing systems having a material impact on its Cleared CDS clearance and settlement services. If it appears that the outage may extend for 30 minutes or longer, CME shall report the systems outage immediately. If it appears that the outage will be resolved in less than 30 minutes, CME shall report the systems outage within a reasonable time after the outage has been resolved.

(8) CME, directly or indirectly, shall make available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that CME may establish to calculate mark-to-market margin requirements for CME clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by CME.

(9) CME shall not materially change its methodology for determining Cleared CDS margin levels without prior written approval from the Commission, and from FINRA with respect to customer margin requirements that would apply

[64] *See* 17 CFR 240.17d–1 for a description of a designated examining authority.

to broker-dealers. (b) Exemption for CME and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (b)(2) is available to:

(i) CME; and

(ii) Any eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), other than: (A) An eligible contract participant that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons; (B) an eligible contract participant that is a self-regulatory organization, as that term is defined in Section 3(a)(26) of the Exchange Act; or (C) a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof).

(2) Scope of exemption.

(i) In general. Such persons generally shall, solely with respect to Cleared CDS, be exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply in connection with security-based swap agreements. Accordingly, under this exemption, those persons would remain subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements (*i.e.*, paragraphs (2) through (5) of Section 9(a), Section 10(b), Section 15(c)(1), paragraphs (a) and (b) of Section 16, Section 20(d) and Section 21A(a)(1) and the rules thereunder that explicitly are applicable to security-based swap agreements). All provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions also remain applicable.

(ii) Exclusions from exemption. The exemption in paragraph (b)(2)(i), however, does not extend to the following provisions under the Exchange Act:

(A) Paragraphs (42), (43), (44), and (45) of Section 3(a);

(B) Section 5;

(C) Section 6;

(D) Section 12 and the rules and regulations thereunder;

(E) Section 13 and the rules and regulations thereunder;

(F) Section 14 and the rules and regulations thereunder;

(G) Paragraphs (4) and (6) of Section 15(b);

(H) Section 15(d) and the rules and regulations thereunder;

(I) Section 15C and the rules and regulations thereunder;

(J) Section 16 and the rules and regulations thereunder; and

(K) Section 17A (other than as provided in paragraph (a)).

(c) Exemption for certain CME clearing members.

Any CME clearing member registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act (but that is not registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)) that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling or holding Cleared CDS for other persons shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (b)(2), solely with respect to Cleared CDS, subject to the following conditions:

(1) The CME clearing member shall be in material compliance with the rules of CME, and applicable laws and regulations, relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS; and

(2) To the extent that the CME clearing member receives or holds funds or securities of U.S. customers for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions, the CME clearing member shall segregate such funds and securities of U.S. customers from the CME clearing member's own assets (*i.e.*, the member may not permit U.S. customers to ''opt out'' of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to ''opt out'').

(d) Exemption for certain registered broker-dealers.

A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (b)(2), solely with respect to Cleared CDS, except:

(1) Section 7(c);

(2) Section 15(c)(3);

(3) Section 17(a);

(4) Section 17(b);

(5) Regulation T, 12 CFR 200.1 *et seq.*;

(6) Rule 15c3–1;

(7) Rule 15c3–3;

(8) Rule 17a–3;

(9) Rule 17a–4;

(10) Rule 17a–5; and

(11) Rule 17a–13;

provided, that a CME clearing member that is a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) and that is also registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act and that holds customer funds and securities for the purpose of purchasing, selling, clearing, settling or holding Cleared CDS in a futures account (as that term is defined in Rule 15c3–3(a)(15) [17 CFR 240.15c3–3(a)(15)]) also shall be exempt from Exchange Act Rule 15c3–3, subject to the following conditions:

(1) The CME clearing member shall be in material compliance with the rules of CME, and applicable laws and regulations, relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS;

(2) The CME clearing member shall segregate such funds and securities of U.S. customers from the CME clearing member's own assets (*i.e.*, the member may not permit U.S. customers to ''opt out'' of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to ''opt out''); and

(3) The CME clearing member shall collect from each customer the amount of margin that is not less than the amount required for Cleared CDS under the margin rule of the self-regulatory organization that is its designated examining authority.

(e) For purposes of this Order, ''Cleared CDS'' shall mean a credit default swap that is submitted (or offered, purchased or sold on terms providing for submission) to CME, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which:

(1) The reference entity, the issuer of the reference security, or the reference security is one of the following:

(i) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(ii) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(iii) a foreign sovereign debt security;

(iv) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or

(v) an asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae; or

(2) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (1).

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5927 Filed 3–18–09; 8:45 am]

BILLING CODE

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59563; File No. SR–FINRA–2009–009]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 1122 (Filing of Misleading Information as to Membership or Registration) in the Consolidated FINRA Rulebook

March 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to adopt NASD Interpretative Material 1000–1 (''IM–1000–1'') (Filing of Misleading Information as to Membership or Registration) as a FINRA rule in the consolidated FINRA rulebook with minor changes. The proposed rule change would renumber NASD IM–1000–1 as FINRA Rule 1122 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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 IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt NASD Interpretative Material 1000–1 (''IM–1000–1'') (Filing of Misleading Information as to Membership or Registration) as a FINRA rule in the consolidated FINRA rulebook with minor changes discussed below.

NASD IM–1000–1 provides that the filing of membership or registration information as a Registered Representative with FINRA which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed conduct inconsistent with just and equitable principles of trade and may be subject to disciplinary action.

FINRA proposes to adopt NASD IM–1000–1 as FINRA Rule 1122 as it believes that this rule continues to be an important tool in ensuring that members and persons associated with members provide complete and accurate membership and registration information. FINRA proposes to clarify its applicability to members and persons associated with members by specifying that ''no member or person associated with a member'' shall file incomplete or misleading membership or registration information. FINRA also proposes to eliminate the reference to the filing of registration information ''as a Registered Representative'' to clarify that the rule applies to the filing of registration information regarding any category of registration. In addition, FINRA proposes to delete the reference that the prohibited conduct may be deemed inconsistent with just and equitable principles of trade and subject to disciplinary action as unnecessary and to better reflect the proposed adoption of the NASD IM as a stand-alone FINRA rule.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change helps to ensure the accuracy and completeness of membership and registration information filed with FINRA.

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

FINRA 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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] 15 U.S.C. 78*o*–3(b)(6).