

are advised that they have the option of having investors attest to SMMP status as a means of streamlining the dealers' process for determining that the customer is an SMMP. However, a dealer would not be able to rely upon a customer's SMMP attestation if the dealer knows or has reason to know that an investor lacks sophistication concerning a municipal securities transaction, as discussed in detail below.

Because the list of factors may actually serve as a constraint on the dealer's reasonable basis determination, when FINRA Rule 2111 eliminated a very similar list of factors, the MSRB decided to eliminate the list from the restated SMMP notice as well. This provides more flexibility to a dealer as to how it will satisfy the reasonable basis requirement of the general rule. The MSRB wishes to clarify that dealers might find those factors useful but would not be required to consider them.

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

Within 45 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 or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

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

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2012-05 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-MSRB-2012-05. This file

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2012-05 and should be submitted on or before May 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-8878 Filed 4-12-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66773; File No. SR-CME-2012-09]

### Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Comply With Revisions to CFTC Regulations Governing Derivatives Clearing Organizations

April 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 29, 2012, the Chicago Mercantile Exchange

Inc. ("CME") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

CME proposes to amend certain of its rules to comply with pending revisions to Commodity Futures Trading Commission ("CFTC") Regulations governing derivatives clearing organizations ("DCOs"). The text of the proposed rule change is available at the CME's Web site at <http://www.cmegroup.com/market-regulation/rule-filings.html>.

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

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

CME is registered as a DCO with the CFTC and operates a substantial business clearing futures and swaps contracts subject to the jurisdiction of the CFTC. CME proposes to amend certain of its rules to comply with pending changes to CFTC Regulations that require DCOs to make corresponding rule changes. The changes that are the subject of this filing will become effective on May 7, 2012.

##### 1. Amendments To Comply With CFTC Regulations 39.12(a)(5)(B)

The CFTC adopted a number of new regulations designed to implement the core principles for DCOs in the Commodity Exchange Act ("CEA"), as amended by the Dodd-Frank Act. Certain of these new DCO regulations become effective on May 7, 2012, including CFTC Regulation 39.12(a)(5)(B), which provides that: "(B) A derivatives clearing organization shall require clearing members that are not

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

futures commission merchants to make the periodic financial reports provided pursuant to paragraph (a)(5)(i) of this section available to the Commission [CFTC] upon the Commission's [CFTC's] request or, in lieu of imposing this requirement, a derivatives clearing organization may provide such financial reports directly to the Commission [CFTC] upon the Commission's [CFTC's] request."

In order to comply with CFTC Regulation 39.12(a)(5)(B), CME proposes to amend CME Rule 970.B by adding new language that makes clear that non-FCM clearing members are required to make available to the CFTC upon request copies of financial reports required to be submitted to the CME audit department.

## 2. Amendments To Comply With CFTC Regulations 39.13(h)(5)(B)–(C)

New CFTC Regulations effective on May 7, 2012, also include CFTC Regulation 39.13(h)(5), which requires each DCO to adopt rules that: "(B) Ensure that it has the authority to request and obtain information and documents from its clearing members regarding their risk management policies, procedures, and practices, including, but not limited to, information and documents relating to the liquidity of their financial resources and their settlement procedures; and (C) Require its clearing members to make information and documents regarding their risk management policies, procedures, and practices available to the Commission [CFTC] upon the Commission's [CFTC's] request."

In order to comply with Regulation 39.13(h)(5), CME proposes to amend CME Rule 982 and CME Rule 8F010 to make clear that clearing members will be required upon request to make appropriate information available regarding risk management policies, procedures, and practices.

## 3. Amendments To Comply With CFTC Regulation 39.12(a)(2)(iii)

New CFTC Regulations effective May 7, 2012, also include CFTC Regulation 39.12(a)(2)(iii) which provides that a DCO "shall not set minimum capital requirements of more than \$50 million for any person that seeks to become a clearing member in order to clear swaps." In order to comply with this Regulation, CME proposes to amend CME Rule 8F04 to conform it to the new standard described above. Note that CME plans to make additional changes in the near future to the relevant chapters in its rulebook governing interest rate swap and credit default

swap clearing member obligations and qualifications.

CME also made two separate filings, CME Submissions 12–067 and 12–097, with its primary regulator, the CFTC, with respect to the proposed rule changes.

CME believes the proposed changes are consistent with the requirements of the Act. CME, a DCO, is required to implement the proposed changes to comply with recent changes to CFTC regulations. CME notes that the policies of the CEA with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for derivatives markets, promoting the prompt and accurate clearance of transactions, and protecting investors and the public interest.

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

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

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

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

## III. Solicitation of Comments

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

- Electronic comments may be submitted by using the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR–CME–2012–09 on the subject line.

- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–CME–2012–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CME–2012–09 and should be submitted on or before May 4, 2012.

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

Section 19(b) of the Act<sup>3</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act, and the rules and regulations thereunder applicable to CME.<sup>4</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act which requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency because the proposed rule change should allow CME to better monitor the financial status and risk management procedures of its clearing members.<sup>5</sup>

In its filing, CME requested that the Commission approve this proposed rule change on an accelerated basis for good cause shown. CME cites as the reason for this request CME's operation as a

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

<sup>4</sup> 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

DCO, which is subject to regulation by the CFTC under the CEA. This rule change is being made according to regulations promulgated by the CFTC, which were previously subject to notice and comment. Not approving this request on an accelerated basis would have a significant impact on CME's operations as a DCO.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register** because the proposed rule change allows CME to implement the regulations of another federal regulatory agency, the CFTC, in accordance with those regulations' effective date.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CME-2012-09) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-8879 Filed 4-12-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66774; File No. SR-FINRA-2011-075]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 13204 of the Code of Arbitration Procedure for Industry Disputes To Preclude Collective Action Claims From Being Arbitrated

April 9, 2012.

## I. Introduction

On December 22, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend Rule 13204 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to preclude collective action claims by employees of FINRA

members under the Fair Labor Standards Act (FLSA), the Age Discrimination in Employment Act (ADEA), or the Equal Pay Act of 1963 (EPA) from being arbitrated under the Industry Code. Specifically, the proposal would, among other things, (1) State that collective action claims under the FLSA, the ADEA, or the EPA may not be arbitrated under the Code; (2) provide that any claim involving similarly situated plaintiffs against the same defendants, such as a court-certified collective action or a putative collective action, would not be arbitrated in FINRA's arbitration forum; (3) give arbitrators the authority to decide disputes about whether a claim is part of a collective action; and (4) prohibit a member firm or associated person from enforcing any arbitration agreement against a member of a certified or putative collective action with respect to any claim that is the subject of the certified or putative collective action until either the collective certification is denied or the group is decertified.

The proposed rule change was published for comment in the **Federal Register** on January 11, 2012.<sup>3</sup> The Commission received two comments on the proposed rule change.<sup>4</sup> On March 29, 2012, FINRA filed a response to comments and a partial amendment to the proposed rule change ("Amendment No. 1").<sup>5</sup> The Commission is publishing this notice and order to solicit comment on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of Proposed Rule Change

As stated in the Notice, Rule 13204 of the Industry Code generally provides that any claim that is based upon the

<sup>3</sup> See Exchange Act Release No. 66109 (Jan. 5, 2012), 77 FR 1773 (Jan. 11, 2012) (Notice of Filing of Proposed Rule Change to Amend the Code of Arbitration Procedure for Industry Disputes To Preclude Collective Action Claims from Being Arbitrated) ("Notice"). The comment period closed on February 1, 2012.

<sup>4</sup> See Letter from Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated February 1, 2012 ("SIFMA Letter"); and letter from Jill I. Gross, Director, Edward Pekarek, Assistant Director, and Genavieve Shingle, Student Intern, Investor Rights Clinic at Pace Law School, dated February 1, 2012 ("PIRC Letter"). Comment letters are available at <http://www.sec.gov>.

<sup>5</sup> See Letter from Mignon McLemore, Assistant Chief Counsel, FINRA, FINRA Dispute Resolution, to Elizabeth M. Murphy, Secretary, SEC, dated March 28, 2012 ("Response to Comments No. 1 and Partial Amendment No. 1"). The text of Response to Comments No. 1 and Partial Amendment No. 1 is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, and on the Commission's Web site at <http://www.sec.gov>.

same facts and law, and involves the same defendants as in a court-certified class action or a putative class action, shall not be arbitrated. The Notice also stated that in 1999 FINRA issued an Interpretive Letter stating that its class action rules should include collective action claims brought under the FLSA and, therefore, considered these claims ineligible for arbitration in its forum.<sup>6</sup> However, as described in the Notice, the United States District Court for the Southern District of New York found that an FLSA collective action is not a class action for purposes of Rule 13204 of the Industry Code and compelled arbitration of such claims in FINRA's dispute resolution forum.<sup>7</sup>

In response to the court's finding, FINRA is proposing to amend Rule 13204 to preclude collective action claims from being arbitrated in FINRA's forum under the Industry Code. The proposed amendments to Rule 13204, would separate Rule 13204 into two sections: subparagraph (a) for class actions, and subparagraph (b) for collective actions. Subparagraph (a) would be titled, "Class Actions," and re-numbered. Subparagraph (b) would be titled, "Collective Actions," and would contain four subparagraphs.

Proposed subparagraph (b)(1) would state that collective action claims under the FLSA, the ADEA, or the EPA may not be arbitrated under the Industry Code.

Under proposed subparagraph (b)(2), any claim that involves plaintiffs who are similarly-situated against the same defendants as in a court-certified collective action or a putative collective action, or that is ordered by a court for collective action at a forum not sponsored by a self-regulatory organization, would not be arbitrated under the Industry Code, if the party bringing the claim has opted in to the collective action.

Under proposed subparagraph (b)(3), as originally proposed, the Director would have referred to a panel any dispute as to whether a claim is part of a collective action, unless a party asked the court hearing the collective action to resolve the dispute within 10 days of receiving notice that the Director has decided to refer the dispute to a panel. Amendment No. 1, however, would permit a party to ask any forum (not just a court) hearing the collective action to resolve the dispute within the specified time.

<sup>6</sup> See Notice (citing FINRA Interpretive Letter to Cliff Palefsky, Esq., dated September 21, 1999).

<sup>7</sup> *Id.* (citing *Hugo Gomez et al. v. Brill Securities, Inc. et al.*, No. 10 Civ. 3503, 2010 U.S. Dist. LEXIS 118162 (S.D.N.Y. Nov. 2, 2010)).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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