

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72530; File No. SR-CME-2014-24]

### Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Settlement Procedures Regarding Five CME Cleared OTC FX Spot, Forward and Swap Contracts

July 3, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 23, 2014, Chicago Mercantile Exchange Inc. (“CME”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II and III below, which Items have been primarily prepared by CME. CME filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(4)(ii)<sup>4</sup> thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

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

CME is filing proposed rule changes that are limited to its business as a derivatives clearing organization (“DCO”). More specifically, the proposed rule changes contain amendments to certain aspects of CME’s settlement procedures for five of CME’s Cleared Over-the-Counter Foreign Exchange Spot, Forward and Swap Contracts.

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

In its filing with the Commission, CME included statements concerning the purpose 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. 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 the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME is registered as a DCO with the Commodity Futures Trading Commission (“CFTC”) and offers clearing services for many different futures and swaps products. The proposed rule changes that are the subject of this filing are limited to CME’s business as a DCO offering clearing services for CFTC-regulated swaps products. CME currently offers clearing services for cleared-only OTC FX contracts on a number of different currency pairs. These CME Cleared OTC FX Spot, Forward and Swap Contracts are non-deliverable foreign currency forward contracts and, as such, are considered to be “swaps” under applicable regulatory definitions.<sup>5</sup> CME proposes to make amendments to five of these contracts. There is currently no open interest in these contracts.

The amendments would impact the following CME rules:

- CME Rule 277H.02.A.—Day of Cash Settlement and 277H.02.B.—[Reserved] and the addition of an Interpretation of Chapter 277H of Cleared OTC U.S. Dollar/Peruvian Nuevo Sol (USD/PEN) Spot, Forwards and Swaps Contracts (Rulebook Chapter: 277H; Code: USDPEN);
- CME Rule 273H.02.A.—Day of Cash Settlement and 273H.02.B.—[Reserved] and the addition of an Interpretation of Chapter 273H of Cleared OTC U.S. Dollar/Columbian Peso (USD/COP) Spot, Forwards and Swaps Contracts (Rulebook Chapter: 273H; Code: USDCOP);
- CME Rule 274H.02.B.—Procedures if No Cash Settlement Price is Available of Cleared OTC U.S. Dollar/Chilean Peso (USD/CLP) Spot, Forwards and Swaps Contracts (Rulebook Chapter: 274H; Code: USDCLP);
- CME Rule 257H.02.A.—Day of Cash Settlement of Cleared OTC U.S. Dollar/Brazilian Real (USD/BRL) Spot, Forwards and Swaps Contracts (Rulebook Chapter: 257H; Code: USDBRL); and
- CME Rule 283H.02.A.—Day of Cash Settlement of Cleared OTC U.S. Dollar/Philippines Peso (USD/PHP) Spot, Forwards and Swaps Contracts (Rulebook Chapter: 283H; Code: USDPHP).

<sup>5</sup> See Commodity Futures Trading Commission and Securities and Exchange Commission Joint Final Rule Defining “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement;” Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule, 77 FR 48207, 48255 (August 13, 2012).

In summary, the amendments would modify the rules above to align them with procedures currently used in the over-the-counter (OTC) non-deliverable forward (NDF) market in order to reduce basis risk for market participants.

The rules governing the cleared only USD/PEN and USD/COP contracts are being conformed to internationally accepted practices. The amendments would include new procedures to settle these contracts to the EMTA COP/EMTA PEN Indicative Survey Rate, as applicable, when the “Tasa Representativa del Mercado or TRM” Colombian peso per U.S. dollar rate or the “PEN INTERBANK AVE (PEN05)” Peruvian Nuevo Sol per U.S. dollar rate, as applicable, are unavailable. The new procedures are designed to follow current cash market practices by instituting certain back-up survey processes that would be available in the event the primary survey rates are unavailable. The back-up process is administered by EMTA, a prominent trade group for the emerging markets trading and investment community, and involves the consolidation of survey results gathered through polling of a set of participating banks.

The amendments to the USD/BRL and USD/PPH contracts are also designed to conform the rules to internationally accepted practices. For example, the amendments specify that, for each applicable cleared contract for the valid value date for cash settlement in one or two business days, as applicable, for the appropriate currency. Each contract would be liquidated under the rules by cash settlement at a price equal to the daily final settlement price.<sup>6</sup>

CME is amending the CME Rulebook regarding the USD/CLP contract to specify that in the event that the “CLP DOLAR OBS (CLP10)” Chilean pesos per U.S. dollar rate is not published on a valid date for cash settlement, and the EMTA CLP Indicative Survey does not provide a rate, then Force Majeure shall be in effect.

<sup>6</sup> Based on Staff’s conversation with CME personnel on June 30, 2014, CME provided the following clarification for this paragraph:

The amendments to the USD/BRL and USD/PPH contracts are also designed to conform the rules to internationally accepted practices. For example, Rule 257H.02.A is being amended to read as follows: “Each Cleared OTC Contract, for a valid value date for cash settlement in two Business Days, shall be liquidated by cash settlement at a price equal to the daily Final Settlement Price for that day.” The previous formulation of Rule 257H.02.A specified one business day. In contrast, the language of Rule 283H.02.A is being amended to specify: “Each Cleared OTC Contract, for the valid value date for cash settlement in one Business Day, shall be liquidated by cash settlement at a price equal to the daily Final Settlement Price (FSP) for that day.” The previous formulation of Rule 283H.02.A specified two business days.

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(ii).

The changes that are described in this filing are limited to CME's business as a DCO clearing products under the exclusive jurisdiction of the CFTC and do not materially impact CME's security-based swap clearing business in any way. The changes will be effective on filing. CME notes that it has also certified the proposed rule changes that are the subject of this filing to its primary regulator, the CFTC, in a separate filing, CME Submission No. 14-175. The text of the CME proposed rule amendments is attached as Exhibit 5 to CME's filing with the Commission, with additions underlined and deletions in brackets.

CME believes the proposed rule changes are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act.<sup>7</sup> CME is proposing the amendments to align its current rules related to five OTC FX swap contracts more closely with procedures currently used in the OTC NDF market for the purpose of reducing basis risk for market participants. These amendments which are designed to reduce basis risk will benefit market participants clearing OTC FX swaps contracts with CME and, as such, should be seen to be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Exchange Act.<sup>8</sup>

Furthermore, the proposed changes are limited in their effect to products offered under CME's authority to act as a DCO. The products that are the subject of this filing are under the exclusive jurisdiction of the CFTC. As such, the proposed CME changes are limited to CME's activities as a DCO clearing swaps that are not security-based swaps, futures that are not security futures and forwards that are not security forwards. CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

Because the proposed changes are limited in their effect to OTC FX products offered under CME's authority to act as a DCO, the proposed changes are properly classified as effecting a change in an existing service of CME that:

- (a) primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps; and forwards that are not security forwards; and
- (b) does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service.

As such, the changes are therefore consistent with the requirements of Section 17A of the Exchange Act<sup>9</sup> and are properly filed under Section 19(b)(3)(A)<sup>10</sup> and Rule 19b-4(f)(4)(ii)<sup>11</sup> thereunder.

#### *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. The proposed amendments are designed to align CME's current rules related to five OTC FX swap contracts more closely with procedures currently used in the OTC NDF market for the purpose of reducing basis risk for market participants and are operational processing changes. These operational processing changes will help reduce market participants' basis risk and should not be seen to impact 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and Rule 19b-4(f)(4)(ii)<sup>13</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### **IV. Solicitation of Comments**

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CME-2014-24 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-CME-2014-24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME and on CME's Web site at <http://www.cmegroup.com/market-regulation/rule-filings.html>.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

<sup>9</sup> 15 U.S.C. 78q-1.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(4)(ii).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(4)(ii).

<sup>7</sup> 15 U.S.C. 78q-1.

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

Number SR-CME-2014-24 and should be submitted on or before July 30, 2014.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72526; File No. SR-NYSEArca-2014-67]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of WBI SMID Tactical Growth Shares; WBI SMID Tactical Value Shares; WBI SMID Tactical Yield Shares; WBI SMID Tactical Select Shares; WBI Large Cap Tactical Growth Shares; WBI Large Cap Tactical Value Shares; WBI Large Cap Tactical Yield Shares; WBI Large Cap Tactical Select Shares; WBI Tactical Income Shares; and WBI Tactical High Income Shares under NYSE Arca Equities Rule 8.600

July 2, 2014.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 20, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On July 1, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice, as modified by Amendment No. 1, 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

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): WBI SMID Tactical Growth Shares; WBI SMID Tactical Value Shares; WBI SMID Tactical Yield Shares; WBI SMID Tactical Select Shares; WBI Large Cap Tactical Growth Shares; WBI Large Cap Tactical Value Shares; WBI Large Cap Tactical Yield Shares; WBI Large Cap Tactical Select Shares; WBI Tactical Income Shares; and WBI Tactical High Income Shares. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares<sup>5</sup> on the Exchange: WBI SMID Tactical Growth Shares; WBI SMID Tactical Value Shares; WBI SMID Tactical Yield Shares; WBI SMID Tactical Select

Shares; WBI Large Cap Tactical Growth Shares; WBI Large Cap Tactical Value Shares; WBI Large Cap Tactical Yield Shares; WBI Large Cap Tactical Select Shares; WBI Tactical Income Shares; and WBI Tactical High Income Shares (each, a “Fund” and, collectively, the “Funds”). The Shares will be offered by Absolute Shares Trust (the “Trust”),<sup>6</sup> a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>7</sup> Millington Securities, Inc. will be the investment adviser for each Fund (the “Adviser”) and WBI Investments, Inc. will be the sub-adviser to each Fund (the “Sub-Adviser”).<sup>8</sup> U.S. Bank,

<sup>6</sup> The Trust is registered under the 1940 Act. On February 28, 2014, the Trust filed with the Commission an amended registration statement on Form N-1A relating to the Funds (File Nos. 333-192733 and 811-22917) (the “Registration Statement”). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Adviser and the actively managed exchange-traded trusts it advises, including the Trust, under the 1940 Act. See Investment Company Act Release No. 30543 (May 29, 2013) (File No. 812-13886) (the “Exemptive Order”).

<sup>7</sup> The Commission has previously approved the listing and trading on the Exchange of other of actively managed funds under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (SR-NYSEArca-2009-74) (order approving listing of Four Grail Advisors RP Exchange-Traded Funds) and 67320 (June 29, 2012), 77 FR 39763 (July 5, 2012) (SR-NYSEArca-2012-44) (order approving listing of the iShares Strategic Beta U.S. Large Cap Fund and iShares Strategic Beta U.S. Small Cap Fund).

<sup>8</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). The Adviser is wholly owned by WBI Trading Company, Inc., and the Sub-Adviser is an affiliate of WBI Trading Company. The Adviser and the Sub-Adviser are each registered as an investment adviser under the Advisers Act. As a result, the Adviser, the Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, the Adviser, the Sub-Adviser, and their related personnel are subject to the provisions of Rule 206(4)-7 under the Advisers Act, which makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual

Continued

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> In Amendment No. 1, the Exchange makes the following clarifications: That (1) the WBI SMID Tactical Growth Shares ETF may invest in debt-based exchange-traded notes; (2) “Options Strategies” include the use of options that overlie: exchange-listed equity indices; and futures on debt, interest rates, and currencies; and (3) “Financial Instruments” include forward contracts on currencies.

<sup>5</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1), as amended (“1940 Act”), organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.