

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-2011-15 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-2011-15. 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-2011-15 and should be submitted on or before November 22, 2011.

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

In its filing, CME requested that the Commission approve this request on an accelerated basis, for good cause shown. CME has articulated three reasons for granting this request on an accelerated basis. One, the products covered by this filing, and CME's operations as a derivatives clearing organization for such products, are regulated by the CFTC under the CEA. Two, the proposed rule changes relate solely to

interest rate swap clearing and therefore relate solely to its swaps clearing activities and do not significantly relate to CME's functions as a clearing agency for security-based swaps. Three, not approving this request on an accelerated basis will have a significant impact on the swap clearing business of CME as a designated clearing organization.

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,<sup>4</sup> and the rules and regulations thereunder applicable to CME. 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 promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions because it should allow CME to enhance its services in clearing interest rate swaps, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions.<sup>5</sup>

The Commission finds good cause for accelerating approval because: (i) The proposed rule change does not significantly affect any securities clearing operations of the clearing agency (whether in existence or contemplated by its rules) or any related rights or obligations of the clearing agency or persons using such service; (ii) CME has indicated that not providing accelerated approval would have a significant impact on the swap clearing business of CME as a designated clearing organization; and (iii) the activity relating to the non-security clearing operations of the clearing agency for which the clearing agency is seeking approval is subject to regulation by another regulator.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2)<sup>6</sup> of the Act, that the

<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).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-CME-2011-15) is approved on an accelerated basis.

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

Kevin M. O'Neill,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65634; File No. SR-CME-2011-11]

### Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Fee Waiver Program Applicable to Its OTC Credit Default Swap Index Clearing Offering

October 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 17, 2011, 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 prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(4)(ii)<sup>4</sup> thereunder.

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

The text of the proposed rule change is below. *Italicized text* indicates additions; [bracketed] text indicates deletions.

\* \* \* \* \*

#### FEE WAIVER PROGRAM FOR OTC CREDIT DEFAULT SWAP CLEARING

##### Program Purpose.

*The purpose of this Program is to encourage market participants to increase their OTC clearing activity for the product listed below.*

##### Product Scope

*OTC Credit Default Swap Clearing ("Product").*

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

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

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

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

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

### Eligible Participants

All market participants including CME CDS Clearing Members and their customers are eligible. The fee incentives described below will be automatically applied to all cleared trades in the Product.

### Program Term

Start date is October 31, 2011. End date is December 31, 2011.

### Hours

The incentives will apply to transactions cleared in the Product.

### Program Incentives

**Fee Waivers.** All market participants that clear the Product will have their clearing fees waived.

\* \* \* \* \*

## 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 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

CME proposes to implement a fee waiver program that will apply to OTC credit default swap index clearing at CME (the "Program"). The Program will be a general fee waiver that would apply equally to all market participants, including CDS Clearing Members and their customers. The Program by its terms would become operative on October 31, 2011 and extend through December 31, 2011.

In July 2011, CME lifted certain volume caps applicable to its OTC credit default swap index clearing business that were initially implemented in December, 2009. CME followed up with a launch of a broader set of credit default swap index products available for clearing in September, 2011. CME expects that the combination of its recently expanded breadth of products, the termination of the volume caps and the establishment of the Program will encourage customers to place more volume into the system to ensure readiness and help build open interest in credit default swap index products prior to implementation of the upcoming centralized clearing mandate.

The proposed rule changes that are the subject of this filing are related to

fees and therefore will become effective immediately. However, the Program will become operative as of October 31, 2011. CME has also certified the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission ("CFTC"), and CME expects that those certified proposed rule changes will become effective on October 31, 2011. The text of the proposed rule amendments is in Section 1 of this notice, with additions italicized and deletions in brackets.

The proposed CME rule amendments establish or change a member due, fee or other charge imposed by CME under Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934 and Rule 19b-4(f)(ii) thereunder. CME believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder and, in particular, to 17A(b)(3)(iv),<sup>5</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among participants. CME notes that it operates in a highly competitive market in which market participants can readily direct business to competing venues. CME further notes that the proposed change is non-discriminatory in that it is equally applicable to all market participants.

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

The proposed rule change does not 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to Section 19(b)(3)(A)(ii) of the Act and paragraph (f)(ii) of Rule 19b-4 and became effective on filing. At any time within 60 days of the filing of such 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 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-2011-11 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-2011-11. 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-2011-11 and should be submitted on or before November 22, 2011.

<sup>5</sup> The Commission notes that the correct citation is Section 19(b)(3)(A).

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

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

Kevin M. O'Neill,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65632; File No. SR-FICC-2011-08]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Expand the Applicability of the Fails Charge to Agency Debt Securities Transactions

October 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on October 20, 2011, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by FICC. 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

The purpose of the proposed rule change is to expand the applicability of the fails charge to Agency debt securities transactions.

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

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

The Treasury Markets Practices Group (the "TMPG"), a group of market participants active in the Treasury securities market sponsored by the Federal Reserve Bank of New York (the "FRBNY"), has been addressing the persistent settlement fails in Agency debt securities transactions that have arisen, in part, due to low interest rates.

To encourage market participants to resolve fails promptly, the TMPG recommends expanding the applicability of the fails charge (which currently applies to Treasury securities transactions) to Agency debt with the objective of reducing the incidence of delivery failures and supporting liquidity in this market.

The TMPG had previously recommended a charge for fails on Treasury securities, which the Government Securities Division (the "GSD") implemented pursuant to rule filing 2009-03.<sup>4</sup> At that time, the TMPG recommendation did not extend to Agency securities and, therefore, the GSD's 2009 rule filing did not cover Agency debt. However, the TMPG recently has expanded its recommendation to cover certain Agency securities and, therefore, the GSD is proposing to apply the existing fails charge regime to Agency debt transactions as recommended by the TMPG. Specifically, transactions in debentures issued by Fannie Mae, Freddie Mac, and the Federal Home Loan Banks now will be subject to this charge. The proposed fails charge for Agencies will be the same as that currently in place for Treasuries and is equal to the greater of: (a) 0 percent and (b) 3 percent per annum minus the federal funds target rate. The charge will accrue each calendar day a fail is outstanding.

The following examples illustrate the manner in which the proposed fails charge will apply:

*Example 1:* A settlement obligation fails and the next calendar date is a valid FICC business date. The GSD calculates the TMPG fail charge from the date the fail occurs to the next valid FICC business date. As the next valid business date is the next calendar date, the member's credit/debit resulting from the TMPG fail charge is assessed for one day.

*Example 2:* A settlement obligation fails and the next calendar date is a holiday occurring on a Tuesday, Wednesday or Thursday. The GSD calculates the TMPG fail charge from the date the fail occurs to the

next valid FICC business date. The TMPG fail charge is assessed for two days; the day the fail occurs and the date of the holiday.

*Example 3:* A settlement obligation fails on Friday and the following Monday is not a holiday. The GSD calculates the TMPG fail charge from the date the fail occurs to the next valid FICC business date. The TMPG fail charge is assessed for three days; Friday, Saturday and Sunday.

FICC's Board of Directors (or appropriate Committee thereof) will retain the right to revoke application of the proposed charges if industry events or practices warrant such revocation.

The expansion of the fails charge trading practice to the Agency debt market would require that Rule 11 (Netting System), Section 14 (Fails Charge) of the GSD rulebook be amended to make such rule applicable to debentures issued by any of Fannie Mae, Freddie Mac or the Federal Home Loan Banks. The current GSD rule states that the fails charge shall be the product of the (i) Funds associated with a failed position and (ii) 3 percent per annum minus the target fed funds rate that is effective at 5 p.m. EST on the business day prior to the originally scheduled settlement date, capped at 3 percent per annum. FICC is proposing to restate the formula to make it clearer by amending section (ii) of the formula to read "the greater of (a) 0 percent or (b) 3 percent per annum minus the target fed funds rate \* \* \*." This change is not meant to affect the result of the formula in any way but rather is a more precise way of stating the formula.

The proposed rule change makes clear that FICC will not guaranty fails charge proceeds in the event of a default (*i.e.*, if a defaulting member does not pay its fail charge, members due to receive fails charge proceeds will have those proceeds reduced pro-rata by the defaulting member's unpaid amount).

#### Timing of Implementation

The fails charges will apply to transactions in Agency debentures entered into on or after February 1, 2012, as well as to transactions that were entered into, but remain unsettled as of, February 1, 2012. For transactions entered into prior to, and unsettled as of, February 1, 2012, the fails charge will begin accruing on the later of February 1, 2012, or the contractual settlement date.

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to FICC because it would facilitate the prompt and

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

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

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

<sup>4</sup> See Securities Exchange Act Release No. 34-59802 (April 20, 2009), 74 FR 19248 (April 28, 2009).

<sup>5</sup> 15 U.S.C. 78q-1.