

Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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-ISE-2012-67 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-ISE-2012-67. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2012-67 and should be submitted by August 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67533; File No. SR-CME-2012-31]

### Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Make Clarifying Changes to CME Rule 819 and Certain Chapter 8F Rules

July 30, 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 July 25, 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 the Terms of Substance of the Proposed Rule Change

CME proposes to make clarifying changes to CME Rule 819 and certain Chapter 8F Rules. The text of the proposed rule change is available at the CME's Web site at <http://www.cmegroup.com>, at the principal office of CME, 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, CME included statements concerning the purpose and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements and comments 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 these statements.<sup>3</sup>

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

CME proposes to make certain clarifying changes to CME Rule 819, 8F002, 8F004 and 8F008. The proposed changes do not affect CME's credit default swap clearing ("CDS") offering. The proposed effective date for the revisions is August 1, 2012.

In order to clarify that the lien on collateral held by the CME clearing house includes both property of clearing members and customer performance bond, CME proposes to change language in both CME Rule 819 and Rule 8F008. The clarifying language is intended to align CME Rules 819 and 8F008 with current CME Rule 8H008, which governs CDS clearing and states, in pertinent part: "Each CDS Clearing Member hereby grants to the Clearing House a first priority and unencumbered lien to secure all obligations of such CDS Clearing Member to the Clearing House against any property and collateral deposited with the Clearing House by the CDS Clearing Member."

In addition, CME proposes to revise CME Rule 8F004 in order to: (a) Clarify that the minimum capital requirements for firms that clear credit default swaps and/or interest rate swaps are not governed by Rule 8F004 but rather by current Rules 8G004 and 8H004; and (b)

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</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> The Commission has modified the text of the summaries prepared by CME.

make the minimum capital requirement \$5 million for OTC Clearing Members that only clear agricultural swaps (and not other OTC Derivatives).

Finally, CME proposes a technical amendment to the definition of "OTC Derivatives" in CME Rule 8F002 to reflect that section 2(h) of the Commodity Exchange Act ("CEA") no longer provides exemptive relief.

CME notes that it has already certified the proposed changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission ("CFTC"), in CME Submission 12-241.

CME believes the proposed changes are consistent with the requirements of the Exchange Act including Section 17A in that they make clarifying changes that will facilitate the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts and transactions and will help assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and, in general, help to protect investors and the public interest.

CME further notes that the proposed changes are limited to its business as a derivatives clearing organization under the CEA and therefore do not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. 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 over-the-counter 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-comment@sec.gov](mailto:rule-comment@sec.gov). Please include File No. SR-CME-2012-31 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-2012-31. 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. 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-2012-31 and should be submitted on or before August 24, 2012.

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

Section 19(b) of the Act<sup>4</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. In particular, Section

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

17A(b)(3)(F)<sup>5</sup> of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds that are in the custody or control of the clearing agency, or for which it is responsible, and protect investors and the public interest. The Commission finds that the proposed clarifications are consistent with the requirements of Section 17A(b)(3)(F) of the Act because the clarifications should allow CME's Members to better monitor their financial status and risk-management procedures. This, in turn, should enhance CME's ability to safeguard the securities and funds in its custody or control, or for which it is responsible.<sup>6</sup>

In its filing, CME requested that the Commission approve these proposed rule changes prior to the thirtieth day after the date of publication of the notice of the filing. CME has articulated three reasons for so granting approval. First, CME notes that the products covered by this filing, and the CME's operations as a derivatives clearing organization for such products, are regulated by the CFTC under the CEA. Second, the proposed rule changes affect the futures and swaps that CME clears and therefore relate solely to its futures and swaps clearing activities and do not significantly relate to the CME's functions as a clearing agency for security-based swaps. Third, the clarifying changes will help promote the prompt and accurate clearance of transactions and therefore are designed to protect investors and the public interest.

The Commission finds good cause for granting approval of the proposed rule changes prior to the thirtieth day after publication of the notice of filing because: (i) The proposed rule changes do not significantly affect any of CME's securities clearing operations or any related rights or obligations of CME or persons using such service; (ii) CME has indicated that not providing accelerated approval would have a significant impact on its business as a designated clearing organization; and (iii) the activity relating to CME's non-security clearing operations for which CME is seeking approval is subject to regulation by another federal regulator.

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

<sup>6</sup> See 15 U.S.C. 78q-1. In approving these proposed rule changes, the Commission has considered the proposed rule changes' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

## V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-CME-2012-31) be, and hereby 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.*

[FR Doc. 2012-18970 Filed 8-2-12; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67539; File No. SR-NASDAQ-2012-088]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Port Fees

July 30, 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 July 19, 2012, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

Nasdaq proposes to modify the port fees charged to members and non-members for ports used to enter orders into Nasdaq systems, in connection with the use of other trading telecommunication protocols.

The text of the proposed rule change is below. Proposed new language is in italics.<sup>3</sup>

\* \* \* \* \*

#### 7015. Access Services

(a)-(f) No change.

(g) Other Port Fees.

The following port fees shall apply in connection with the use of other trading telecommunication protocols:

- \$500 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is \$1000 per month for *software-based TotalView-ITCH* or \$2,500 per month for *combined software- and hardware-based TotalView-ITCH*.

- An additional \$200 per month for each port used for entering orders or quotes over the Internet.

- An additional \$600 per month for each port used for market data delivery over the Internet.

(h) No change.

\* \* \* \* \*

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing to amend Nasdaq Rule 7015 (Access Services) to modify the monthly fee it charges for ports used to enter orders in Nasdaq trading systems, such as the Nasdaq Market Center and the Nasdaq Options Market [sic], in connection with the use of other trading telecommunication protocols.

Specifically, the fee change is to establish an optional new \$2,500 per month port fee for those customers that elect to take the hardware-based TotalView-ITCH equities depth feed that uses field-programmable gate array ("FPGA") technology,<sup>4</sup> in addition to the software-based TotalView-ITCH version, to receive delivery of Nasdaq Depth-of-Book data, defined in Nasdaq Rule 7023 to include TotalView, OpenView, and NASDAQ Level 2 (collectively, "Nasdaq Depth data"). In offering this new optional port fee using a hardware-delivery mechanism, Nasdaq is serving those customers requiring a predictable latency profile throughout the trading day. By taking advantage of hardware parallelism, FPGA technology is capable of

processing more data packets during peak market conditions without the introduction of variable queuing latency.

Currently, in accordance with Nasdaq Rule 7015(g), customers receiving TotalView-ITCH pay \$1,000 per multicast ITCH data feed port pair for the software-version of the depth feed. This optional new port fee enables a customer to opt to receive both the software- and hardware-based versions for a total of \$2,500, meaning that for an additional \$1,500 per month a customer can receive the hardware-based version. This new pricing option is available to all members and non-members and is in response to industry demand, as well as due to changes in the technology to distribute and consume market data.

Competition for depth data is considerable and the Exchange believes that this proposal clearly evidences such competition. The Exchange is offering a new port fee in order to keep pace with changes in the industry and evolving customer needs as new technologies emerge and products continue to develop and change. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The proposed port fee is based on pricing conventions and distinctions that exist in Nasdaq's current fee schedule, and the fee schedules of other exchanges. These distinctions for the proposed port fee for hardware-based delivery of Nasdaq Depth data are based on a careful analysis of empirical data and the application of time-tested pricing principles already accepted by the Commission and discussed in greater depth in the Statutory Basis section below. Also, the costs associated with the port fee using the hardware-based delivery system for Nasdaq Depth data are higher than a software-based solution due to increased operating expenditures associated with creating, shipping, installing and maintaining the new equipment and codebase. Because it uses a distinct technology, the overall costs of creation and maintenance of the hardware-based version of TotalView-ITCH are higher than the software-based version.

The proposed port fee for the hardware-based delivery of Nasdaq Depth data is completely optional. Accordingly, Nasdaq is offering his new port fee for the hardware-based delivery of Nasdaq Depth data so that customers may elect to receive Nasdaq direct data content in a predictable manner throughout the trading day.

<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> Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaqomx.cchwallstreet.com>.

<sup>4</sup> See Securities Exchange Act Release No. 67297 (June 28, 2012), 77 FR 39752 (July 5, 2012) (SR-NASDAQ-2012-063).