

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received with respect to the proposed rule change.

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

The proposed rule change has been designated by the Amex as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> Consequently, because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Amex has requested that the Commission waive the 30-day operative delay specified in Rule 19b-4(f)(6) so that the Amex may continue the quote assist pilot program on the ANTE System uninterrupted. The Exchange states that the proposed rule is substantially similar to comparable rules the Commission has approved for the Amex,<sup>14</sup> the Chicago Board Options Exchange ("CBOE"),<sup>15</sup> and the New

York Stock Exchange ("NYSE").<sup>16</sup> Accordingly, the Amex believes that its proposal does not raise new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>17</sup> The Commission believes that the Amex's proposal raises no new issues or regulatory concerns that the Commission did not consider in approving the Amex, CBOE, and NYSE proposals.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.<sup>18</sup>

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

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-057 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-057. This file number should be included on the subject line if e-mail 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 inspection and copying 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 Amex. 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-Amex-2005-057 and should be submitted on or before August 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. E5-3622 Filed 7-8-05; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51958; File No. SR-CME-2005-02]

### **Self-Regulatory Organization; Chicago Mercantile Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rules Governing Security Futures Adjustments**

June 30, 2005.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 thereunder,<sup>2</sup> notice is hereby given that on May 4, 2005, the Chicago Mercantile Exchange ("CME" or "Exchange") 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 by the Exchange.

CME has also certified the proposed rule change with the Commodity Futures Trading Commission ("CFTC") under Section 5c(c) of the Commodity

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> See Securities Act Release No. 42952 (June 16, 2000), 65 FR 39210 (June 23, 2000).

<sup>15</sup> See Securities Act Release No. 47701 (April 18, 2003), 68 FR 22426 (April 28, 2003).

<sup>16</sup> See Securities Act Release No. 41386 (May 10, 1999), 64 FR 26809 (May 17, 1999).

<sup>17</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>18</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on June 24, 2005, the date the Amex filed Amendment No. 2.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

Exchange Act ("CEA")<sup>3</sup> on May 4, 2005. 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**

CME proposes to adopt rules governing Security Futures Product Adjustments for purposes of Section 6(h) of the Act.<sup>4</sup> Proposed new language is italicized.

## **CHAPTER 701: SECURITY FUTURES PRODUCTS ADJUSTMENTS**

### **70101. SCOPE OF CHAPTER**

*This chapter is limited in application to Security Futures Products ("SFPs") traded on Chicago Mercantile Exchange where the underlying interest is a single equity security or a narrow-based index. The procedures for clearing, delivery, settlement and other matters not specifically covered herein shall be governed by the Rules of the Exchange.*

### **70110. ADJUSTMENTS TO SECURITY FUTURES PRODUCTS**

1. Determinations as to whether and how to adjust the terms of Security Futures Products to reflect events affecting underlying interests shall be made by the Clearing House based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to the buyers and sellers of Security Futures Products on the underlying interest, the maintenance of a fair and orderly market in futures on the underlying interest, consistency of interpretation and practice, efficiency of settlement of delivery obligations arising from physically-settled Security Futures Products, and the coordination with other clearing agencies of the clearance and settlement of transactions in the underlying security. The Clearing House may, in addition to determining adjustments to Security Futures Products on a case-by-case basis, adopt interpretations having general application to specified types of events. Every determination by the Clearing House in respect of Security Futures Products pursuant to this Rule shall be within the discretion of the Clearing House and shall be conclusive and binding on all investors and not subject to review. The following paragraphs of this Rule apply to Security Futures Products based on single equity securities only.

2. *Whenever there is a dividend, stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, reclassification or similar event in respect of any underlying security, or a merger, consolidation, dissolution or liquidation of the issuer of any underlying security, the number of Security Futures Product contracts, the unit of trading, the settlement price and the underlying security, or any of them, with respect to all outstanding Security Futures Products open for trading in the underlying security may be adjusted in accordance with this Rule. If the Clearing House does not learn, or does not learn in a timely manner, of an event for which the Clearing House would have otherwise made an adjustment, the Clearing House shall not be liable for any failure to make such adjustment or delay in making such adjustment. In making any adjustment determination, the Clearing House shall apply the factors set forth in this Rule in light of the circumstances known to it at the time such determination is made.*

3. It shall be the general rule that there will be no adjustments to reflect ordinary cash dividends or distributions or ordinary stock dividends or distributions (collectively, "ordinary distributions") by the issuer of the underlying security.

4. Subject to paragraph 3 of this Rule, it shall be the general rule that in the case of a stock dividend, stock distribution or stock split whereby one or more whole numbers of shares of the underlying security are issued with respect to each outstanding share, each SFP contract covering that underlying security shall be increased by the same number of additional SFP contracts as the number of shares issued with respect to each share of the underlying security, the last settlement price established immediately before such event shall be proportionately reduced, and the unit of trading shall remain the same.

5. Subject to paragraph 3 of this Rule, it shall be the general rule that in the case of a stock dividend, stock distribution or stock split whereby other than a whole number of shares of the underlying security is issued in respect of each outstanding share, the last settlement price established immediately before such event shall be proportionately reduced, and conversely, in the case of a reverse stock split or combination of shares, the last settlement price established immediately before such event shall be proportionately increased. Whenever

the settlement price with respect to a stock future has been reduced or increased in accordance with this paragraph, the unit of trading shall be proportionately increased or reduced, as the case may be.

6. It shall be the general rule that in the case of any distribution made with respect to shares of an underlying security, other than ordinary distributions and other than distributions for which adjustments are provided in paragraphs 4 or 5 of this Rule, if the Clearing House determines that an adjustment to the terms of Security Futures Products on such underlying security is appropriate, (a) the last settlement price established immediately before such event shall be reduced by the value per share of the distributed property, in which event the unit of trading shall not be adjusted, or alternatively, (b) the unit of trading in effect immediately before such event shall be adjusted so as to include the amount of property distributed with respect to the number of shares of the underlying security represented by the unit of trading in effect prior to such adjustment, in which event the settlement price shall not be adjusted. The Clearing House shall, with respect to adjustments under this paragraph or any other paragraph of this Rule, have the authority to determine the value of distributed property.

7. In the case of any event for which adjustment is not provided in any of the foregoing paragraphs of this Rule, the Clearing House may make such adjustments, if any, with respect to the Security Futures Products affected by such event as the Clearing House determines.

8. Adjustments pursuant to this Rule shall as a general rule become effective in respect of outstanding Security Futures Products on the "ex-date" established by the primary market for the underlying security.

9. It shall be the general rule that (a) all adjustments of the settlement price of an outstanding stock future shall be rounded to the nearest adjustment increment, (b) when an adjustment causes a settlement price to be equidistant between two adjustment increments, the settlement price shall be rounded up to the next highest adjustment increment, (c) all adjustments of the unit of trading shall be rounded down to eliminate any fraction, and (d) if the unit of trading is rounded down to eliminate a fraction, the adjusted settlement price shall be further adjusted, to the nearest adjustment increment, to reflect any diminution in the value of the stock

<sup>3</sup> 7 U.S.C. 7a-(c).

<sup>4</sup> 15 U.S.C. 78f(h).

future resulting from the elimination of the fraction.

10. Notwithstanding the general rules set forth in paragraphs 3 through 9 of this Rule or which may be set forth as interpretations to this Rule, the Clearing House shall have the power to make exceptions in those cases or groups of cases in which, in applying the standards set forth in paragraph 1 of this Rule, the Clearing House shall determine such exceptions to be appropriate. However, the general rules shall be applied unless the Clearing House affirmatively determines to make an exception in a particular case or group of cases.

#### INTERPRETATION TO RULE 70110

##### ADJUSTMENTS TO SECURITY FUTURES PRODUCTS

1. (a) Cash dividends or distributions by the issuer of the underlying security that the Clearing House believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly or other regular basis, will, as a general rule, be deemed to be "ordinary distributions" within the meaning of paragraph 3 of this Rule. The Clearing House will determine on a case-by-case basis whether other dividends or distributions are "ordinary distributions" or whether they are dividends or distributions for which an adjustment should be made. (b) Stock dividends or distributions by the issuer of the underlying security that the Clearing House believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly basis will, as a general rule, be deemed to be "ordinary distributions" within the meaning of paragraph 3 of this Rule. The Clearing House will ordinarily adjust for other stock dividends and distributions. (c) Where the Clearing House determines to adjust for a cash or stock dividend or distribution, the adjustment shall be made in accordance with the applicable provisions of this Rule.

2. Adjustments will ordinarily be made for rights distributions, except as provided below in the case of certain "poison pill" rights. When an adjustment is made for a rights distribution, the unit of trading in effect immediately prior to the distribution will ordinarily be adjusted to include the number of rights distributed with respect to the number of shares or other units of the underlying security comprising the unit of trading. If, however, the Clearing House determines that the rights are due to expire before the time they could be exercised upon

delivery under the futures contract, then delivery of the rights will not be required. Instead, the Clearing House will ordinarily adjust the last settlement price established before the rights expire to reflect the value, if any, of the rights as determined by the Clearing House in its sole discretion. Adjustments will not ordinarily be made to reflect the issuance of so-called "poison pill" rights that are not immediately exercisable, trade as a unit or automatically with the underlying security, and may be redeemed by the issuer. In the event such rights become exercisable, being to trade separately from the underlying security, or are redeemed, the Clearing House will determine whether an adjustment is appropriate.

3. Adjustments will not be made to reflect a tender offer or exchange offer to the holders of the underlying security, whether such offer is made by the issuer of the underlying security or by a third person or whether the offer is for cash, securities or other property. This policy will apply without regard to whether the price of the underlying security may be favorably or adversely affected by the offer or whether the offer may be deemed to be "coercive." Outstanding Security Futures Products ordinarily will be adjusted to reflect a merger, consolidation or similar event that becomes effective following the completion of a tender offer or exchange offer.

4. Adjustments will not be made to reflect changes in the capital structure of an issuer where all of the underlying securities outstanding in the hands of the public (other than dissenters' shares) are not changed into another security, cash or other property. For example, adjustments will not be made merely to reflect the issuance (except as a distribution on an underlying security) of new or additional debt, stock, or options, warrants or other securities convertible into or exercisable for the underlying security, the refinancing of the issuer's outstanding debt, the repurchase by the issuer of less than all of the underlying securities outstanding, or the sale by the issuer of significant capital assets.

5. When an underlying security is converted into a right to receive a fixed amount of cash, such as in a merger, outstanding Security Futures Products will be adjusted to replace such underlying security with such fixed amount of cash as the underlying interest, and the unit of trading shall remain unchanged.

6. In the case of a corporate reorganization, reincorporation or similar occurrence by the issuer of an

underlying security which results in an automatic share-for-share exchange of shares in the issuer for shares in the resulting company, Security Futures Products on the underlying security will ordinarily be adjusted by replacing such underlying security with a like number of units of the shares of the resulting company. Because the securities are generally exchanged only on the books of the issuer and the resulting company, and are not generally exchanged physically, deliverable shares will ordinarily include certificates that are denominated on their face as shares in the original issuer, but which, as a result of the corporate transaction, represent shares in the resulting company.

7. When an underlying security is converted in whole or in part into a debt security and/or a preferred stock, as in a merger, and interest or dividends on such debt security or preferred stock are payable in the form of additional units thereof, outstanding Security Futures Products that have been adjusted by replacing the original underlying security with the security into which the original underlying security has been converted shall be further adjusted, effective as of the ex-date for each payment of interest or dividends thereon, by increasing the unit of trading by the number of units of the new underlying security distributed as interest or dividends thereon.

8. Notwithstanding this Interpretation of Rule 70110, distributions of short-term and long-term capital gains in respect of stock fund shares by the issuer thereof shall not, as a general rule, be deemed to be "ordinary dividends or distributions" within the meaning of paragraph 3 of Rule 70110, and adjustments of the terms of Security Futures Products on such stock fund shares for such distributions shall be made in accordance with applicable provisions of Rule 70110, unless the Clearing House determines, on a case-by-case basis, not to adjust for such a distribution.

9. In the event that a new series of Security Futures Products is introduced with a settlement price expressed in decimals and there is an outstanding series of Security Futures Products on the same underlying security with a settlement price expressed as a fraction that could be expressed in whole cents, the Clearing House may restate the settlement price of the outstanding series as its equivalent decimal price. If the settlement price for the outstanding series is a fraction that cannot be expressed in whole cents, the settlement price may not be restated as a decimal.

## 70120. UNAVAILABILITY OR INACCURACY OF FINAL SETTLEMENT PRICE

1. If the Clearing House shall determine that the primary market(s) for the underlying security in respect of a maturing stock future did not open or remain open for trading at or before the time when the final settlement price for such futures would ordinarily be determined, or that the price or other value used to determine the final settlement price is unreported or otherwise unavailable, then, in addition to any other actions that the Clearing House may be entitled to take under the Rules, the Clearing House shall be empowered to do any or all of the following with respect to maturing futures affected by such event ("affected futures"):

(a) The Clearing House may suspend the time for making the final variation payment with respect to affected futures and, in the case of physically-settled Security Futures Products, may postpone the delivery date. At such time as the Clearing House determines that the required price or other value is available or the Clearing House has fixed the final settlement price pursuant to subparagraph (a) or (b) of this Rule, the Clearing House shall fix a new date for making the final variation payment and may fix a new delivery date for physically-settled Security Futures Products.

(b) The Clearing House may fix the final settlement price for affected futures, based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to buyers and sellers of affected futures, the maintenance of a fair and orderly market in such futures, and consistency of interpretation and practice. Without limiting the generality of the foregoing, the Clearing House may, if it deems such action appropriate for the protection of investors and the public interest, fix the final settlement price on the basis of the reported price of the underlying security or reported level of the underlying index at the close of regular trading hours (as determined by the Clearing House) on the last preceding trading day for which a closing stock price or index level was reported by the reporting authority.

2. The Clearing House may fix the final settlement price for affected futures using the opening prices of the relevant security or securities when the primary market(s) reopen. In that case, the date for making the final variation payment for the affected futures shall be postponed until the business day next

following the day on which the final settlement price is fixed; and, in the case of physically-settled Security Futures Products, the delivery date shall also be postponed accordingly.

3. Every determination of the Clearing House pursuant to this Section shall be within the discretion of the Clearing House and shall be conclusive and binding on all investors and not subject to review. Unless the Clearing House directs otherwise, the price of an underlying security and the current index value of an underlying index as initially reported by the relevant reporting authority shall be conclusively presumed to be accurate and shall be deemed final for the purpose of determining settlement prices and the final settlement price, even if such price or value is subsequently revised or determined to have been inaccurate.

### INTERPRETATION TO 70120. UNAVAILABILITY OR INACCURACY OF FINAL SETTLEMENT PRICE

The Clearing House will not adjust officially reported stock prices for final settlement purposes, even if those prices or values are subsequently found to have been erroneous, except in extraordinary circumstances. Such circumstances might be found to exist where, for example, the closing price or current index value as initially reported is clearly erroneous and inconsistent with prices or values reported earlier in the same trading day, and a corrected closing price or current index value is promptly announced by the reporting authority. In no event will a completed settlement be adjusted due to errors in officially reported stock prices or current index values.

### 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 Exchange 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects or such statements.

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

#### 1. Purpose

The Exchange proposed to adopt CME Chapter 702, Security Futures Product Adjustments. The proposed CME Chapter 702 specifies the Exchange's response to corporate events and the possible unavailability or inaccuracy of spot values for use as final settlement prices. The Exchange believes that these rules are substantially identical to rules currently deployed by the Options Clearing Corporation ("OCC") with respect to the maintenance and bookkeeping of security futures products ("SFPs") and to the provisions of CME Chapter 8B.<sup>5</sup>

#### Section 6(h)(3) of the Act Requirements

Section 6(h)(3) of the Act<sup>6</sup> contains listing standards and conditions for trading SFPs. Below is a summary of each such requirement or condition, followed by a brief explanation of how CME would comply with it, whether by particular provisions in CME Listing Standards or otherwise.

Clause (A) of Section 6(h)(3) of the Act<sup>7</sup> requires that any security underlying a SFP be registered pursuant to Section 12 of the Act.<sup>8</sup> This requirement is addressed by CME Rules 70001.2, 70003.2.b, 70004.2.a, and proposed CME Rule 70002.1.a.

Clause (B) of Section 6(h)(3) of the Act<sup>9</sup> requires that a market on which a physically settled SFP is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the SFP. CME has reached an agreement with a participant of DTC, a registered clearing agency, to facilitate the delivery-versus-payment transactions which result from an agreement to make or take delivery of the underlying security by the market participant.<sup>10</sup> This DTC participant would provide CME with a dedicated DTC account. This account would be a sub-account of the participant's main account and would be utilized solely for CME

<sup>5</sup> CME Chapter 8B addresses procedures applied to SFPs effected on a marketplace apart from CME but cleared by CME Clearing House.

<sup>6</sup> 15 U.S.C. 78f(h)(3).

<sup>7</sup> 15 U.S.C. 78f(h)(3)(A).

<sup>8</sup> 15 U.S.C. 78l.

<sup>9</sup> 15 U.S.C. 78f(h)(3)(B).

<sup>10</sup> The Exchange clarified its arrangement for the payment and delivery of securities underlying the SFPs. Telephone conversation between John Labuszewski, Managing Director, CME, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on June 9, 2005.

activity with respect to the delivery of, and payment for, securities delivered against CME SFPs. CME would act as a contra party to each delivery transaction. The CME Clearing House would submit a delivery instruction for each transaction to DTC by electronic interface provided by the DTC participant. Market participants would be required to provide proof to CME outlining their operational and legal ability to make or take delivery of the underlying securities. These agreements and relevant procedures would be fully operational prior to any possible delivery event associated with such SFPs.

Clause (C) of Section 6(h)(3) of the Act<sup>11</sup> provides that listing standards for SFPs must be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.<sup>12</sup> For the reasons discussed herein, notwithstanding specified differences between the Sample Listing Standards and CME Listing Standards, CME believes that the latter are no less restrictive than comparable listing standards for exchange-traded options.

Clause (D) of Section 6(h)(3) of the Act<sup>13</sup> requires that each SFP be based on common stock or such other equity securities as the Commission and CFTC jointly determine are appropriate. This requirement is addressed by CME Rules 70001.1, 70002.1., 70003.2., and 70004.2.

Clause (E) of Section 6(h)(3) of the Act<sup>14</sup> requires that each SFP be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear SFPs, which permits the SFPs to be purchased on one market and offset on another market that trades such product. CME proposes to clear SFPs traded through Exchange facilities through CME Clearing House. CME Clearing House would have in place all provisions for linked and coordinated clearing as mandated by law and statute as of the effective date of such laws and statutes.

Clause (F) of Section 6(h)(3) of the Act<sup>15</sup> requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act<sup>16</sup> effect transactions in a SFP. CME

clearing members and their correspondents are bound by the applicable sales practice rules of the National Futures Association ("NFA"), which is a national securities association. As such, the sales practice rules of NFA are, perforce, comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act.<sup>17</sup> Moreover, the application of NFA sales practice rules is extended beyond the CME clearing membership to the extent that NFA By-Law 1101 provides that "[n]o member may carry an account, accept an order or handle a transaction in commodity futures contracts for or on behalf of any non-Member of NFA."

Clause (G) of Section 6(h)(3) of the Act<sup>18</sup> requires that each SFP be subject to the prohibition against dual trading in Section 4j of CEA<sup>19</sup> and the rules and regulations thereunder or the provisions of Section 11(a) of the Act<sup>20</sup> and the rules and regulations thereunder. CME Rule 123 requires Exchange members to comply with all applicable "provisions of the Commodity Exchange Act and regulations duly issued pursuant thereto by the CFTC."

Further, the prohibition of dual trading in SFPs per Regulation § 41.27<sup>21</sup> adopted pursuant to Section 4j(a) of CEA<sup>22</sup> applies to a contract market operating an electronic trading system if such market provides participants with a time or place advantage or the ability to override a predetermined matching algorithm. The Exchange intends to offer SFPs on CME exclusively on its CME Globex electronic trading platform. To the extent that the conditions cited above do not exist in the context of the CME Globex system, the CME Rulebook contains no specific rule relating to dual trading in an electronic forum.

Clause (H) of Section 6(h)(3) of the Act<sup>23</sup> provides that trading in a SFP must not be readily susceptible to manipulation of the price of such SFP, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities. CME believes that CME Listing Standards are designed to ensure that CME SFPs and the underlying securities would not be readily susceptible to price manipulation. Under CME Rule 432, an activity "to manipulate prices or to

attempt to manipulate prices" is a "major offense" punishable, per CME Rule 430, by "expulsion, suspension, and/or a fine of not more than \$1,000,000 plus the monetary value of any benefit received as a result of the violative action."

Clause (I) of Section 6(h)(3) of the Act<sup>24</sup> requires that procedures be in place for coordinated surveillance amongst the market on which a SFP is traded, any market on which any security underlying the SFP is traded, and other markets on which any related security is traded to detect manipulation and insider trading. The Exchange has surveillance procedures in place to detect manipulation on a coordinated basis with other markets. In particular, CME is an affiliate member of the Intermarket Surveillance Group ("ISG") and is party to an affiliate agreement and an agreement to share market surveillance and regulatory information with the other ISG members. Further, CME is party to a supplemental agreement with the other ISG members to address the concerns expressed by the Commission with respect to affiliate ISG membership.<sup>25</sup> Finally, CME Rule 424 permits CME to enter into agreements for the exchange of information and other forms of mutual assistance with domestic or foreign self-regulatory organizations, associations, boards of trade, and their respective regulators.

Clause (J) of Section 6(h)(3) of the Act<sup>26</sup> requires that a market on which a SFP is traded have in place audit trails necessary or appropriate to facilitate the coordinated surveillance referred to in the preceding paragraph. The Exchange states that it relies upon its Market Regulation Department and its large, highly trained staff to actively monitor market participants and their trading practices and to enforce compliance with CME rules. CME Market Regulation Department staff is organized into Compliance and Market Surveillance Groups. In performing its functions, CME Market Regulation Department routinely works closely with CME Audit Department, CME Clearing House, CME Legal Department, CME Globex Control Center, and CME Information Technology Department.

CME Compliance is responsible for enforcing the trading practice rules of the Exchange through detection, investigation, and prosecution of those

<sup>11</sup> 15 U.S.C. 78f(h)(3)(C).

<sup>12</sup> 15 U.S.C. 78o-3(a).

<sup>13</sup> 5 U.S.C. 78f(h)(3)(D).

<sup>14</sup> 15 U.S.C. 78f(h)(3)(E).

<sup>15</sup> 15 U.S.C. 78f(h)(3)(F).

<sup>16</sup> 15 U.S.C. 78o-3(a).

<sup>17</sup> 15 U.S.C. 78o-3(a).

<sup>18</sup> 15 U.S.C. 78f(h)(3)(G).

<sup>19</sup> 15 U.S.C. 6j.

<sup>20</sup> 15 U.S.C. 78k(a).

<sup>21</sup> 17 CFR 41.27.

<sup>22</sup> 7 U.S.C. 4j(a).

<sup>23</sup> 15 U.S.C. 78f(h)(3)(H).

<sup>24</sup> 15 U.S.C. 78f(h)(3)(I).

<sup>25</sup> See Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002) (joint CFTC and Commission rule relating to cash settlement and regulatory halt requirements for SFPs).

<sup>26</sup> 15 U.S.C. 78f(h)(3)(J).

who may attempt to violate those CME Rules. Further, CME Compliance is responsible for handling customer complaints, ensuring the integrity of the Exchange's audit trail, and administering an arbitration program for the resolution of disputes. CME Compliance employs investigators, attorneys, trading floor investigators, data analysts, and a computer programming and regulatory systems design staff.

CME believes that CME Market Regulation Department has created some of the most sophisticated tools in the world to assist with the detection of possible rule violations and monitoring of the market. Among the systems it uses are the Regulatory Trade Browser ("RTB"), the Virtual Detection System ("VDS"), the Reportable Position System ("RPS"), and the RegWeb Profile System ("RegWeb"). These systems include information on all CME Globex users, all transactions, large positions, and statistical information on trading entities.

CME Market Surveillance is dedicated to the detection and prevention of market manipulation and other similar forms of market disruption. As part of these responsibilities, CME Market Surveillance enforces the Exchange's position limit rules, administers the hedge approval process, and maintains the Exchange's RPS system.

CME believes that the foundation of the CME Market Surveillance program is the deep knowledge of its staff about the major users, brokers, and clearing firms, along with its relationship with other regulators. Day-to-day monitoring of market positions is handled by a dedicated group of surveillance analysts assigned to specific market(s). Each analyst develops in-depth expertise of the factors that influence the market in question. The Exchange estimates that perhaps 90% of the market users at any single time are known to the Exchange. Daily surveillance staff activities include:

- Monitoring positions for size based on percentage of open interest and historic user participation in each contract.

- Aggregation of positions across clearing members with the use of CME trade reporting systems to account for all positions held by any single participant. CME believes that this daily review permits the surveillance analyst to promptly identify unusual market activity.

- As a contract approaches maturity, large positions are scrutinized to determine whether such activity is consistent with prior experience,

allowing prompt regulatory intervention if necessary.

- Analysts closely monitor market news through on-line and print media.
- Staff conducts on-site visits to large market participants periodically.

CME Market Regulation staff investigates possible misconduct and, when appropriate, initiates disciplinary action. CME Rule 430 empowers the Exchange's disciplinary committees to discipline, limit, suspend, or terminate a member's activities for cause, amongst other sanctions. Further, per CME Rule 123, the Exchange requires its members to be responsible for "the filing of reports, maintenance of books and records, and permitting inspection and visitation" in order to facilitate such investigations by Exchange staff.

CME Rule 536 requires that certain information be recorded with respect to each order, including: Time entered, terms of the order, order type, instrument and contract month, price, quantity, account type, account designation, user code, and clearing firm. This information may be recorded manually on timestamped order tickets, electronically in a clearing firms system, or by entering the orders with the required information into CME Globex immediately upon receipt. A complete CME Globex electronic audit trail is archived and maintained by CME for at least a five year period. Clearing firms must also maintain any written or electronic order records for a period of five years.

Clause (K) of Section 6(h)(3) of the Act<sup>27</sup> requires that a market on which a SFP is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the SFP is traded and other markets on which any related security is traded. The Exchange filed with the Commission CME Rules establishing a generalized framework for the trade of SFPs.<sup>28</sup> In particular, proposed CME Rule 71001.F. provides, in accordance with Regulation § 41.25(a)(2) of CEA,<sup>29</sup> that "[t]rading of Physically Delivered Single Security Futures shall be halted at all times that a regulatory halt, as defined per SEC Rule 6h-1(a)(3) and CFTC Regulation § 41.1(1), has been instituted for the underlying security."

Clause (L) of Section 6(h)(3) of the Act<sup>30</sup> requires that the margin requirements for a SFP comply with the regulations prescribed pursuant to

Section 7(c)(2)(B) of the Act.<sup>31</sup> CME has margin rules in place.<sup>32</sup> Thus, CME believes that its customer margin rules are consistent with the requirements of the Act.

For the reasons described above, CME believes that CME Listing Standards submitted herewith satisfy the requirements set forth in Section 6(h)(3) of the Act.<sup>33</sup>

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,<sup>34</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>35</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

CME does not believe that the proposed rule change would impose 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*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(7) of the Act.<sup>36</sup> Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.<sup>37</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

<sup>31</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>32</sup> See Securities Exchange Act Release No. 46637 (October 10, 2002), 67 FR 64672 (October 21, 2002) (SR-CME-2002-01).

<sup>33</sup> 15 U.S.C. 78f(h)(3).

<sup>34</sup> 15 U.S.C. 78f(b).

<sup>35</sup> 15 U.S.C. 78f(b)(5).

<sup>36</sup> 15 U.S.C. 78s(b)(7).

<sup>37</sup> 15 U.S.C. 78s(b)(1).

<sup>27</sup> 15 U.S.C. 78f(h)(3)(K).

<sup>28</sup> See SR-CME-2005-03.

<sup>29</sup> 17 CFR 41.25(a)(2).

<sup>30</sup> 15 U.S.C. 78f(h)(3)(L).



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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CME-2005-02 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CME-2005-02. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Section. 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-2005-02 and should be submitted on or before August 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>38</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-3617 Filed 7-8-05; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51957; File No. SR-CME-2005-03]

### **Self-Regulatory Organization; Chicago Mercantile Exchange; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Rules Governing Contract Specifications for Physically Delivered Single Security Futures**

June 30, 2005.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 thereunder,<sup>2</sup> notice is hereby given that on May 4, 2005, the Chicago Mercantile Exchange ("CME" or "Exchange") 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 by the Exchange. On May 31, 2005, CME filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

CME has also certified the proposed rule change with the Commodity Futures Trading Commission ("CFTC") under Section 5c(c) of the Commodity Exchange Act ("CEA")<sup>4</sup> on May 4, 2005.

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

CME proposes to adopt rules governing the trade of physically delivered single security futures products ("SFPs"). Further, the Exchange hereby certifies the listing of futures on Exchange Traded Funds ("ETFs"), specifically, the Nasdaq-100 Tracking Stock<sup>SM</sup> ("QQQQ"), Standard & Poor's Depository Receipts<sup>®</sup> ("SPDR"), and IWM.<sup>5</sup> The Exchange

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> See letter from John W. Labuszewski, Managing Director, CME, to Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on May 31, 2005. ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to amend the size of its iShares Russell 2000 ("IWM") futures contract to 200 instead of 100 shares. The Exchange believes that this implies that the value of the \$0.01 minimum price fluctuation shall be \$2.00 instead of \$1.00. Also, the Exchange proposes to amend the launch date for IWM futures to June 20, 2005 from June 6, 2005.

<sup>4</sup> 7 U.S.C. 7a-2(c).

<sup>5</sup> The Exchange proposes to make the proposed rule change effective on June 6, 2005 when it intends to list for trading futures based on SPDRs and QQQs. The Exchange proposes to list futures based on IWMs on June 20, 2005. See Amendment No. 1, *supra* note 3.

believes that these contract specifications are substantially similar to contract specifications currently in use with respect to physically delivered single security futures traded elsewhere. Proposed new language is *italicized*.

#### *CHAPTER 710: PHYSICALLY DELIVERED SINGLE SECURITY FUTURES*

##### *71000. SCOPE OF CHAPTER*

*This chapter is limited in application to contract specifications applied to security futures contracts that require the physical delivery of a single security (a "Physically Delivered Single Security Futures"). Single securities that are eligible for listing per this Chapter 710 include those that meeting the initial listing standards per Exchange Rule 70001 and the maintenance listing standards per Exchange Rule 70002.*

##### *71001. FUTURES CALL*

###### *71001.A. Trading Unit*

*Physically Delivered Single Security Futures contracts shall require the delivery of a particular number of shares, as specified per Rule 71004, of common stock; an exchange traded fund ("ETF Share"); a trust issued receipt ("TIR"); a registered closed-end management investment company ("Closed-End Fund Share"); or, American Depository Receipts ("ADR").*

###### *71001.B. Price Increments*

*Physically Delivered Single Security Futures contracts shall be traded in U.S. Dollars with a minimum price increment as determined by the Board of Directors as depicted in Rule 71004.*

###### *71001.C. Trading Schedule*

*Physically Delivered Single Security Futures contracts may be traded during such hours, for delivery in such months as determined by the Board of Directors.*

###### *71001.D. Termination of Trading*

*All trading in a particular Physically Delivered Single Security Futures contract shall terminate at the close of business on the third Friday of the contract month.*

###### *71001.E. Position Limits*

*Position limits shall be applied on Physically Delivered Single Security Futures contracts such that, during the last five trading days of an expiring contract month, a person shall not own or control more than a specified number of contracts net long or net short in the expiring contract month, as depicted in Exchange Rule 71004. Position limits for each Physically Delivered Single Security Futures contract shall be*

<sup>38</sup> 17 CFR 200.30-3(a)(12).