

*Filing Date:* The applications were filed on February 10, 2010.

*Applicants' Address:* 100 Bellevue Parkway, Wilmington, DE 19809.

**BlackRock Legacy Securities Public-Private Trust**

[File No. 811-22316]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Date:* The application was filed on February 12, 2010.

*Applicant's Address:* 100 Bellevue Parkway, Wilmington, DE 19809.

**Nuveen Multistate Shell Trust**

[File No. 811-7759]

**Nuveen Investment Trust IV**

[File No. 811-9061]

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. Applicants are not engaged in business of any kind. Applicants never had any assets and there were no shareholders.

*Filing Date:* The applications were filed on March 9, 2010.

*Applicants' Address:* 333 West Wacker Dr., Chicago, IL 60606.

**Nuveen Multi-Currency Income Fund**

[File No. 811-22071]

**Nuveen Credit Strategies Fund**

[File No. 811-22168]

**Nuveen Connecticut Municipal Value Fund**

[File No. 811-22286]

**Nuveen Massachusetts Municipal Value Fund**

[File No. 811-22287]

**Nuveen High Income Municipal Fund**

[File No. 811-22297]

*Summary:* Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants are not engaged in business of any kind. Applicants never had any assets and there were no shareholders.

*Filing Date:* The applications were filed on March 9, 2010.

*Applicants' Address:* 333 West Wacker Dr., Chicago, IL 60606.

**Nuveen Symphony Market Neutral Fund**

[File No. 811-21264]

**Nuveen Municipal High Income Advantage Fund 3**

[File No. 811-22173]

**Nuveen Connecticut Municipal Income Opportunity Fund**

[File No. 811-22176]

**Nuveen Maryland Municipal Value Fund**

[File No. 811-22288]

**Nuveen North Carolina Municipal Value Fund**

[File No. 811-22289]

**Nuveen Ohio Municipal Value Fund**

[File No. 811-22290]

**Nuveen Virginia Municipal Value Fund**

[File No. 811-22291]

**Nuveen High Grade Municipal Income Fund**

[File No. 811-22292]

*Summary:* Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants are not engaged in business of any kind. Applicants never had any assets and there were no shareholders.

*Filing Date:* The applications were filed on March 9, 2010.

*Applicants' Address:* 333 West Wacker Dr., Chicago, IL 60606.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-7552 Filed 4-2-10; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, April 8, 2010 at 3 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has

certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, April 8, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551-5400.

Dated: April 1, 2010.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2010-7787 Filed 4-1-10; 4:15 pm]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61803; File No. S7-06-09]

**Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With Request of Chicago Mercantile Exchange Inc. Related to Central Clearing of Credit Default Swaps, and Request for Comments**

March 30, 2010.

**I. Introduction**

The Securities and Exchange Commission ("Commission") has taken multiple actions<sup>1</sup> designed to address

<sup>1</sup> See generally Securities Exchange Act Release No. 60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by ICE Clear Europe Limited); Securities Exchange Act Release No. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by Eurex Clearing AG); Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009) ("March 2009 CME order") and Securities Exchange Act Release No. 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009) ("December 2009 CME order") (temporary exemptions in connection with CDS clearing by Chicago Mercantile Exchange Inc.); Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791

Continued

concerns related to the market in credit default swaps (“CDS”).<sup>2</sup> The over-the-counter (“OTC”) market for CDS has been a source of particular concern to us and other financial regulators, and we have recognized that facilitating the establishment of central counterparties (“CCPs”) for CDS can play an important role in reducing the counterparty risks inherent in the CDS market, and thus can help mitigate potential systemic impact. We have therefore found that taking action to help foster the prompt development of CCPs, including granting temporary conditional exemptions from certain provisions of the Federal securities laws, is in the public interest.<sup>3</sup>

The Commission’s authority over the OTC market for CDS is limited. Specifically, Section 3A of the Securities Exchange Act of 1934

(Mar. 12, 2009), Securities Exchange Act Release No. 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009), and Securities Exchange Act Release No. 61662 (Mar. 5, 2010), 75 FR 11589 (Mar. 11, 2010) (temporary exemptions in connection with CDS clearing by ICE Trust U.S. LLC); Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary exemptions in connection with CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) and other Commission actions discussed in several of these orders.

In addition, we have issued interim final temporary rules that provide exemptions under the Securities Act of 1933 and the Securities Exchange Act of 1934 for CDS to facilitate the operation of one or more central counterparties for the CDS market. See Securities Act Release No. 8999 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009) (initial approval); Securities Act Release No. 9063 (Sep. 14, 2009), 74 FR 47719 (Sep. 17, 2009) (extension until Nov. 30, 2010).

Further, the Commission has provided temporary exemptions in connection with Sections 5 and 6 of the Securities Exchange Act of 1934 for transactions in CDS. See Securities Exchange Act Release No. 59165 (Dec. 24, 2008), 74 FR 133 (Jan. 2, 2009) (initial exemption); Securities Exchange Act Release No. 60718 (Sep. 25, 2009), 74 FR 50862 (Oct. 1, 2009) (extension until Mar. 24, 2010).

<sup>2</sup> A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity (“reference entity”) or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take positions in bonds or in segments of the debt market as represented by an index, or to take positions on the volatility in credit spreads during times of economic uncertainty.

Growth in the CDS market has coincided with a significant rise in the types and number of entities participating in the CDS market. CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant to their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms, and hedge funds have entered the CDS market.

<sup>3</sup> See generally actions referenced in note 1, *supra*.

(“Exchange Act”) limits the Commission’s authority over swap agreements, as defined in Section 206A of the Gramm-Leach-Bliley Act.<sup>4</sup> For those CDS that are swap agreements, the exclusion from the definition of security in Section 3A of the Exchange Act, and related provisions, will continue to apply. The Commission’s action today does not affect these CDS, and this Order does not apply to them. For those CDS that are not swap agreements (“non-excluded CDS”), the Commission’s action today provides temporary conditional exemptions from certain requirements of the Exchange Act.

The Commission believes that using well-regulated CCPs to clear transactions in CDS provides a number of benefits by helping to promote efficiency and reduce risk in the CDS market, by contributing to the goal of market stability, and by requiring maintenance of records of CDS transactions that would aid the Commission’s efforts to prevent and detect fraud and other abusive market practices.<sup>5</sup>

In March 2009, the Commission issued an order<sup>6</sup> providing temporary conditional exemptions to the Chicago Mercantile Exchange Inc. (“CME”) and Citadel Investment Group, LLC. (“Citadel”), and certain other parties to permit CME and Citadel to clear and settle CDS transactions.<sup>7</sup> In response to

<sup>4</sup> 15 U.S.C. 78c–1. Section 3A excludes both a non-security-based and a security-based swap agreement from the definition of “security” under Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a “swap agreement” as “any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act \* \* \* the material terms of which (other than price and quantity) are subject to individual negotiation.” 15 U.S.C. 78c note.

<sup>5</sup> See generally actions referenced in note 1, *supra*.

<sup>6</sup> Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009).

<sup>7</sup> For purposes of this Order, “Cleared CDS” means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to CME, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which: (i) the reference entity, the issuer of the reference security, or the reference security is one of the following: (A) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; (B) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States; (C) a foreign sovereign debt security; (D) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or (E)

CME’s request, the Commission temporarily extended and expanded the exemptions in December 2009.<sup>8</sup> The current exemptions are scheduled to expire on March 31, 2010, and CME has requested that the Commission extend those exemptions.<sup>9</sup>

Based on the facts presented and the representations made by CME,<sup>10</sup> and for the reasons discussed in this Order and subject to certain conditions, the Commission is extending each of the existing exemptions connected with CDS clearing by CME: the temporary conditional exemption granted to CME from clearing agency registration under Section 17A of the Exchange Act solely to perform the functions of a clearing agency for certain non-excluded CDS transactions; the temporary conditional exemption of CME and certain of its clearing members from the registration requirements of Sections 5 and 6 of the Exchange Act solely in connection with the calculation of mark-to-market prices for non-excluded CDS cleared by CME; the temporary conditional exemption of CME and certain eligible contract participants from certain Exchange Act requirements with respect to non-excluded CDS cleared by CME; the temporary conditional exemption of certain CME clearing members that receive customer collateral in connection with non-excluded CDS cleared by CME from certain Exchange Act requirements; and the temporary conditional exemption from certain

an asset-backed security issued or guaranteed by the Federal National Mortgage Association (“Fannie Mae”), the Federal Home Loan Mortgage Corporation (“Freddie Mac”) or the Government National Mortgage Association (“Ginnie Mae”); or (ii) the reference index is an index in which 80 percent or more of the index’s weighting is comprised of the entities or securities described in subparagraph (i). See definition in paragraph III.(f)(1) of this Order. As discussed above, the Commission’s action today does not affect CDS that are swap agreements under Section 206A of the Gramm-Leach-Bliley Act. See text at note 4, *supra*.

<sup>8</sup> Securities Exchange Act Release No. 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009).

<sup>9</sup> See Letter from Ann K. Shuman, Managing Director and Deputy General Counsel, CME, to Elizabeth Murphy, Secretary, Commission, Mar. 30, 2010 (“March 2010 request”).

<sup>10</sup> See *id*. The exemptions we are granting today are based on all of the representations made by CME in its request, which in turn incorporate representations made by CME in its request for relief granted in the December 2009 exemptions addressing CDS clearing by CME. We recognize, however, that there could be legal uncertainty in the event that one or more of the underlying representations were to become inaccurate. Accordingly, if any of these exemptions were to become unavailable by reason of an underlying representation no longer being materially accurate, the legal status of existing open positions in non-excluded CDS that previously had been cleared pursuant to the exemptions would remain unchanged, but no new positions could be established pursuant to the exemptions until all of the underlying representations were again accurate.

Exchange Act requirements granted to registered broker-dealers. This extension is temporary, and the exemptions will expire on November 30, 2010.

## II. Discussion

### A. CME's CDS Clearing Activities to Date

CME's request for an extension of its current temporary conditional exemptions incorporates representations, in its request preceding the December 2009 CME order, explaining how CME would clear proprietary CDS transactions of its clearing members and CDS transactions involving its clearing members' clients.<sup>11</sup> These representations are discussed in detail in our earlier CME orders.<sup>12</sup>

On December 15, 2009, CME began offering clearing services for CDS contracts on a limited basis. As of March 12, 2010, CME had cleared 33 CDS transactions, with a total \$189.5 million notional amount, of CDS contracts based on indices of securities.

### B. Extended Temporary Conditional Exemption From Clearing Agency Registration Requirement

In March 2009 and December 2009, in connection with its efforts to facilitate the establishment of one or more CCPs for Cleared CDS, the Commission issued orders conditionally exempting CME from clearing agency registration under Section 17A of the Exchange Act on a temporary basis.<sup>13</sup> Subject to the conditions in those orders, CME has been permitted to act as a CCP for Cleared CDS by novating trades of non-excluded CDS that are securities and generating money and settlement obligations for participants without having to register with the Commission as a clearing agency. The current CME exemptive order expires on March 31, 2009. Pursuant to its authority under

Section 36 of the Exchange Act,<sup>14</sup> for the reasons described herein, the Commission is extending the exemption granted in that order until November 30, 2010, subject to certain conditions.

In the earlier exemptive orders, the Commission recognized the need to ensure the prompt establishment of CME as a CCP for CDS transactions. The Commission also recognized the need to ensure that important elements of Section 17A of the Exchange Act, which sets forth the framework for the regulation and operation of the U.S. clearance and settlement system for securities, apply to the non-excluded CDS market. Accordingly, the temporary exemptions in those orders were subject to a number of conditions designed to enable Commission staff to monitor CME's clearance and settlement of CDS transactions.<sup>15</sup>

The temporary exemptions were based, in part, on CME's representation that it met the standards set forth in the Committee on Payment and Settlement Systems ("CPSS") and International Organization of Securities Commissions ("IOSCO") report entitled: *Recommendations for Central Counterparties* ("RCCP").<sup>16</sup> The RCCP establishes a framework that requires a CCP to have: (i) the ability to facilitate the prompt and accurate clearance and settlement of CDS transactions and to safeguard its users' assets; and (ii) sound risk management, including the ability to appropriately determine and collect clearing fund and monitor its users' trading. This framework is generally consistent with the requirements of Section 17A of the Exchange Act.

The Commission believes that continuing to facilitate the central clearing of CDS transactions—including customer CDS transactions—through a temporary conditional exemption from Section 17A will continue to provide important risk management and systemic benefits by facilitating the prompt establishment of CCP clearance

and settlement services. Accordingly, and consistent with our findings in the CME Exemptive Order, we find pursuant to Section 36 of the Exchange Act that it is necessary and appropriate in the public interest and is consistent with the protection of investors for the Commission to extend, until November 30, 2010, CME's exemption provided from the clearing agency registration requirements of Section 17A, subject to certain conditions.

In granting this exemption, we are balancing the aim of facilitating CME's service as a CCP for non-excluded CDS transactions with ensuring that important elements of Commission oversight are applied to the non-excluded CDS market. The continued use of temporary exemptions will permit the Commission to continue to develop direct experience with the non-excluded CDS market. During the extended exemptive period, the Commission will continue to monitor closely the impact of the CCPs on this market. In particular, the Commission will seek to assure itself that CME has sufficient risk management controls in place and does not act in an anticompetitive manner or indirectly facilitate anticompetitive behavior with respect to fees charged to members, the dissemination of market data, and the access to clearing services by independent CDS exchanges or CDS trading platforms.

This temporary extension of this exemption also is designed to assure that—as CME has represented—information will be available to market participants about the terms of the CDS cleared by CME, the creditworthiness of CME or any guarantor, and the clearance and settlement process for CDS.<sup>17</sup> The Commission believes operation of CME consistent with the conditions of the Order will facilitate the availability to market participants of information that should enable them to make better informed investment decisions and better value and evaluate their Cleared CDS and counterparty exposures relative to a market that is not centrally cleared.

This temporary extension of this exemption is subject to a number of conditions that are designed to enable

<sup>11</sup> See March 2010 Request, *supra* note 9. CME represents that there have been no material changes to the statements made in the letter that preceded the exemptions we granted in the December 2009 CME order, apart from certain developments it described with regard to the implementation of its price quality auction methodology, open access to CDS clearing services, policies and procedures with regard to securities trading by employees, enhancements related to financial safeguards, and the status of a CME petition with the Commodity Futures Trading Commission ("CFTC").

<sup>12</sup> In its present request, CME reiterates that it expects to rely on procedures, pursuant to the price quality auction methodology described in its earlier request for exemptions, whereby CME will periodically require CDS clearing members to trade at prices generated by their indicative settlement prices, where those prices generate crossed bids and offers. To date, CME has yet to require the execution of any trades through this process.

<sup>13</sup> See *supra*, note 1.

<sup>14</sup> 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

<sup>15</sup> See Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009).

<sup>16</sup> The RCCP was drafted by a joint task force ("Task Force") composed of representative members of IOSCO and CPSS and published in November 2004. The Task Force consisted of securities regulators and central bankers from 19 countries and the European Union. The U.S. representatives on the Task Force included staff from the Commission, the Federal Reserve Board, and the CFTC.

<sup>17</sup> The Commission believes that it is important in the CDS market, as in the securities market generally, that parties to transactions have access to financial information that would allow them to evaluate appropriately the risks relating to a particular investment and make more informed investment decisions. See generally Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets, March 13, 2008, available at: [http://www.treas.gov/press/releases/reports/pwgpolicystatementktturmoil\\_03122008.pdf](http://www.treas.gov/press/releases/reports/pwgpolicystatementktturmoil_03122008.pdf).

Commission staff to monitor CME's clearance and settlement of CDS transactions and help reduce risk in the CDS market. These conditions require that CME: (i) Make available on its Web site its annual audited financial statements; (ii) preserve records related to the conduct of its Cleared CDS clearance and settlement services for at least five years (in an easily accessible place for the first two years); (iii) provide information relating to its Cleared CDS clearance and settlement services to the Commission and provide access to the Commission to conduct on-site inspections of facilities, records, and personnel related to its Cleared CDS clearance and settlement services; (iv) notify the Commission on a monthly basis about material disciplinary actions taken against any of its members utilizing its Cleared CDS clearance and settlement services, and about the involuntary termination of the membership of an entity that is utilizing CME's Cleared CDS clearance and settlement services; (v) provide the Commission with changes to rules, procedures, and any other material events affecting its Cleared CDS clearance and settlement services not less than one day prior to effectiveness or implementation of such rule changes, or in exigent circumstances, as promptly as reasonably practicable under the circumstances; (vi) provide the Commission with reports prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements<sup>18</sup> and its annual audited financial statements prepared by independent audit personnel; and (vii) report all significant systems outages to the Commission within specified timeframes.

Also, the temporary extension of this exemption is conditioned on CME, directly or indirectly, making available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that CME may establish to calculate settlement variation or margin requirements for CME clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by CME.

As a CCP, CME will collect and process information about CDS

transactions, prices, and positions from all of its participants. With this information, it will calculate and disseminate current values for open positions for the purpose of setting appropriate margin levels. The availability of such information can improve fairness, efficiency, and competitiveness of the market—all of which enhance investor protection and facilitate capital formation. Moreover, with pricing and valuation information relating to Cleared CDS, market participants would be able to derive information about underlying securities and indexes. This may improve the efficiency and effectiveness of the securities markets by allowing investors to better understand credit conditions generally.

In addition, the temporary extension of this exemption is conditioned on CME not materially changing its methodology for determining Cleared CDS margin levels without prior written approval from the Commission staff,<sup>19</sup> and from FINRA with respect to customer margin requirements that would apply to broker-dealers.

### *C. Extended Temporary Conditional Exemption From Exchange Registration Requirements*

In our December 2009 order in connection with CDS clearing by CME, we granted a temporary conditional exemption for CME from the requirements of Sections 5 and 6 of the Exchange Act, and the rules and regulations thereunder, in connection with CME's methodology for determining CDS settlement prices, including its price quality auction methodology. We also temporarily exempted CME clearing members from the prohibitions of Section 5 to the extent they use CME to effect or report any transaction in Cleared CDS in connection with CME's calculation of mark-to-market prices for open positions in Cleared CDS. Section 5 of the Exchange Act contains certain restrictions relating to the registration of national securities exchanges,<sup>20</sup> while

<sup>19</sup> This condition has been modified from the equivalent condition in the December 2009 CME order, to provide that prior written approval may be given by Commission staff.

<sup>20</sup> In particular, Section 5 provides:

It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange \* \* \* to effect any transaction in a security, or to report any such transactions, unless such exchange (1) is registered as a national securities exchange under section 6 of [the Exchange Act], or (2) is exempted from such registration \* \* \* by reason of the limited volume of transactions effected on such exchange. \* \* \*

15 U.S.C. 78e.

Section 6 provides the procedures for registering as a national securities exchange.<sup>21</sup>

We granted these temporary exemptions to facilitate the establishment of CME's settlement price process. CME had represented that updated settlement prices will be made available to clearing members on their open positions on a regular basis (at least once a day, or more frequently in case of sudden market moves), and that, as part of the CDS clearing process, CME would periodically require CDS clearing members to trade at prices generated by their indicative settlement prices where those indicative settlement prices generate crossed bids and offers, pursuant to CME's price quality auction methodology.

As part of its current request, CME states that it continues to want to be able to make use of procedures that periodically will require clearing members to execute certain CDS trades in this manner.<sup>22</sup>

As discussed above, we have found in general that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to facilitate continued CDS clearing by CME. Consistent with that finding—and in reliance on CME's representation that the settlement pricing process, including the periodically required trading, is part of its clearing process—we further find that it is necessary or appropriate in the public interest, and is consistent with the protection of investors that we exercise our authority under Section 36 of the Exchange Act to extend, until November 30, 2010, CME's temporary exemption from Sections 5 and 6 of the Exchange Act in connection with its calculation of settlement variation prices for open positions in Cleared CDS, and CME clearing members' temporary exemption from Section 5 with respect to such trading activity, subject to certain conditions.

The temporary exemption for CME will continue to be subject to three conditions. First, CME must report the following information with respect to its determination of daily settlement prices for cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports for as long as CME offers CDS clearing services and for a period of at least five years thereafter:

- The total dollar volume of CDS transactions executed during the quarter

<sup>21</sup> 15 U.S.C. 78f. Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

<sup>22</sup> See note 12, *supra*.

<sup>18</sup> See Automated Systems of Self-Regulatory Organization, Exchange Act Release No. 27445 (Nov. 16, 1989), File No. S7-29-89, and Automated Systems of Self-Regulatory Organization (II), Exchange Act Release No. 29185 (May 9, 1991), File No. S7-12-91.

pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index; and

- The total unit volume or notional amount executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index.

Second, CME must establish and maintain adequate safeguards and procedures to protect participants' confidential trading information related to Cleared CDS. Such safeguards and procedures shall include: (a) Limiting access to the confidential trading information of participants to those CME employees who have a need to access such information in connection with the provision of CME CDS clearing services or who are responsible for compliance with this exemption or any other applicable rules; and (b) implementing policies and procedures for CME employees with access to such information with respect to trading for their own accounts. CME must adopt and implement adequate oversight procedures to ensure that the policies and procedures established pursuant to this condition are followed.

Third, CME must comply with the conditions to the temporary exemption from registration as a clearing agency extended by this Order, given that this exemption is granted in the context of our goal of continuing to facilitate CME's ability to act as a CCP for non-excluded CDS, and given CME's representation that the forced trade process is an important component of CME's overall settlement price determination process.

The Commission also is continuing to temporarily exempt each CME clearing member, until November 30, 2010, from the prohibition in Section 5 of the Exchange Act to the extent that such CME clearing member uses any facility of CME to effect any transaction in Cleared CDS, or to report any such transaction, in connection with CME's calculation of mark-to-market prices for open positions in Cleared CDS. Absent an exemption, Section 5 would prohibit any CME clearing member that is a broker or dealer from effecting transactions in Cleared CDS on CME, which will rely on this Order for an exemption from exchange registration. The Commission believes that temporarily exempting CME clearing members from the restriction in Section 5 is necessary and appropriate in the public interest and is consistent with the protection of investors because it will facilitate their use of CME's CCP for Cleared CDS, which for the reasons set forth in this Order the Commission believes to be beneficial. Without also

temporarily exempting CME clearing members from this Section 5 requirement, the Commission's temporary exemption of CME from Sections 5 and 6 of the Exchange Act would be ineffective, because CME clearing members that are brokers or dealers would not be permitted to effect transactions on CME in connection with the end-of-day settlement price process.

#### *D. Extended Temporary Conditional General Exemption for CME and Certain Eligible Contract Participants*

As we recognized in our earlier orders in connection with CDS clearing by CME, applying the full panoply of Exchange Act requirements to participants in transactions in non-excluded CDS likely would deter some participants from using CCPs to clear CDS transactions. We also recognized that it is important that the antifraud provisions of the Exchange Act apply to transactions in non-excluded CDS, particularly given that OTC transactions subject to individual negotiation that qualify as security-based swap agreements already are subject to those provisions.<sup>23</sup>

As a result, we concluded in those orders that it is appropriate in the public interest and consistent with the protection of investors temporarily to apply substantially the same framework to transactions by market participants in non-excluded CDS that applies to transactions in security-based swap agreements. We thus temporarily exempted CME and certain eligible contract participants from a number of Exchange Act requirements, while excluding certain enforcement-related and other provisions from the scope of the exemption.

<sup>23</sup> While Section 3A of the Exchange Act excludes "swap agreements" from the definition of "security," certain antifraud and insider trading provisions under the Exchange Act explicitly apply to security-based swap agreements. See (a) paragraphs (2) through (5) of Section 9(a), 15 U.S.C. 78i(a), prohibiting the manipulation of security prices; (b) Section 10(b), 15 U.S.C. 78j(b), and underlying rules prohibiting fraud, manipulation or insider trading (but not prophylactic reporting or recordkeeping requirements); (c) Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices; (d) Sections 16(a) and (b), 15 U.S.C. 78p(a) and (b), which address disclosure by directors, officers and principal stockholders, and short-swing trading by those persons, and rules with respect to reporting requirements under Section 16(a); (e) Section 20(d), 15 U.S.C. 78t(d), providing for antifraud liability in connection with certain derivative transactions; and (f) Section 21A(a)(1), 15 U.S.C. 78u-1(a)(1), related to the Commission's authority to impose civil penalties for insider trading violations.

"Security-based swap agreement" is defined in Section 206B of the Gramm-Leach-Bliley Act as a swap agreement in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

We believe that continuing to facilitate the central clearing of CDS transactions by CME through this type of temporary conditional exemption will provide important risk management and systemic benefits. We also believe that facilitating the central clearing of customer CDS transactions, subject to the conditions in this Order, will provide an opportunity for the customers of CME clearing members to control counterparty risk.

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to grant an exemption until November 30, 2010, from the requirements of the Exchange Act discussed below, subject to certain conditions. As before, this temporary exemption applies to CME and to eligible contract participants<sup>24</sup> other than: Eligible contract participants that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons;<sup>25</sup> eligible contract participants that are self-regulatory organizations; or eligible contract participants that are registered brokers or dealers.<sup>26</sup>

As before, under this temporary conditional exemption, and solely with respect to Cleared CDS, those persons

<sup>24</sup> This exemption in general applies to eligible contract participants, as defined in Section 1a(12) of the Commodity Exchange Act ("CEA") as in effect on the date of this Order, other than persons that are eligible contract participants under paragraph (C) of that section.

<sup>25</sup> Solely for purposes of this requirement, an eligible contract participant would not be viewed as receiving or holding funds or securities for purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons, if the other persons involved in the transaction would not be considered "customers" of the eligible contract participant in a parallel manner when certain persons would not be considered "customers" of a broker-dealer under Exchange Act Rule 15c3-3(a)(1). For these purposes, and for the purpose of the definition of "Cleared CDS," the terms "purchasing" and "selling" mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing the rights or obligations under, a Cleared CDS, as the context may require. This is consistent with the meaning of the terms "purchase" or "sale" under the Exchange Act in the context of security-based swap agreements. See Exchange Act Section 3A(b)(4). A separate temporary conditional exemption addresses members of CME that hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. See Part ILE, *infra*.

<sup>26</sup> A separate temporary exemption addresses the Cleared CDS activities of registered broker dealers. See Part ILF, *infra*. Solely for purposes of this Order, a registered broker-dealer, or a broker or dealer registered under Section 15(b) of the Exchange Act, does not refer to someone that would otherwise be required to register as a broker or dealer solely as a result of activities in Cleared CDS in compliance with this Order.

generally are exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. Thus, those persons will still be subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements.<sup>27</sup> In addition, all provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions remain applicable.<sup>28</sup> In this way, the temporary exemption applies the same Exchange Act requirements in connection with non-excluded CDS as apply in connection with OTC credit default swaps that are security-based swap agreements.

Consistent with our earlier exemptions, and for the same reasons, this temporary exemption also does not extend to: The exchange registration requirements of Exchange Act Sections 5 and 6;<sup>29</sup> the clearing agency registration requirements of Exchange Act Section 17A; the requirements of Exchange Act Sections 12, 13, 14, 15(d), and 16;<sup>30</sup> the Commission's administrative proceeding authority under Sections 15(b)(4) and (b)(6);<sup>31</sup> or

<sup>27</sup> See note 23, *supra*.

<sup>28</sup> Thus, for example, the Commission retains the ability to investigate potential violations and bring enforcement actions in the federal courts as well as in administrative proceedings, and to seek the full panoply of remedies available in such cases.

<sup>29</sup> These are subject to a separate temporary class exemption. See note 1, *supra*. A national securities exchange that effects transactions in Cleared CDS would continue to be required to comply with all requirements under the Exchange Act applicable to such transactions. A national securities exchange could form subsidiaries or affiliates that operate exchanges exempt under that order. Any subsidiary or affiliate of a registered exchange could not integrate, or otherwise link, the exempt CDS exchange with the registered exchange including the premises or property of such exchange for effecting or reporting a transaction without being considered a "facility of the exchange." See Section 3(a)(2), 15 U.S.C. 78c(a)(2).

This Order also includes a separate temporary exemption from Sections 5 and 6 in connection with the settlement price calculation methodology of CME, discussed above. See Part II.C, *supra*.

<sup>30</sup> 15 U.S.C. 78l, 78m, 78n, 78o(d), 78p. Eligible contract participants and other persons instead should refer to the interim final temporary rules issued by the Commission. See note 1, *supra*.

<sup>31</sup> Exchange Act Sections 15(b)(4) and 15(b)(6), 15 U.S.C. 78o(b)(4) and (b)(6), grant the Commission authority to take action against broker-dealers and associated persons in certain situations.

Accordingly, while this exemption generally extends to persons that act as inter-dealer brokers in the market for Cleared CDS and do not hold funds or securities for others, such inter-dealer brokers may be subject to actions under Sections 15(b)(4) and (b)(6) of the Exchange Act. In addition, such inter-dealer brokers may be subject to actions under Exchange Act Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices. As noted above, Section 15(c)(1) explicitly applies to

certain provisions related to government securities.<sup>32</sup> CME clearing members relying on this temporary exemption must be in material compliance with CME rules.

#### *E. Extension of Conditional Temporary Exemption for Certain Clearing Members of CME*

In our December 2009 order, we granted a temporary conditional exemption from the same Exchange Act requirements discussed above to CME clearing members that receive or hold customer funds or securities for the purpose of purchasing, selling, clearing, settling or holding Cleared CDS positions for customers. Absent an exception or exemption, persons that effect transactions in non-excluded CDS that are securities may be required to register as broker-dealers pursuant to Section 15(a)(1) of the Exchange Act.<sup>33</sup>

As we noted in our earlier orders, it is consistent with our investor protection mandate to require securities intermediaries that receive or hold funds and securities on behalf of others to comply with standards that safeguard the interests of their customers.<sup>34</sup> At the

same time, we recognized that requiring intermediaries that receive or hold funds and securities on behalf of customers in connection with transactions in non-excluded CDS to register as broker-dealers may deter the use of CCPs in CDS transactions, to the detriment of the markets and market participants generally. We concluded that those factors, along with certain representations by CME, argued in favor of flexibility in applying the requirements of the Exchange Act to these intermediaries.

Accordingly, in December 2009 (as in March 2009) we provided a temporary conditional exemption to CME clearing members registered as FCMs that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. Solely with respect to Cleared CDS, those CME clearing members generally were exempted from provisions of the Exchange Act and the underlying rules and regulations that do not apply to security-based swap agreements.

Our December 2009 order—in contrast to the March 2009 order—required CME clearing members relying on this exemption to hold customer collateral in one of three types of accounts: (i) In an account established pursuant to Section 4d of the CEA,<sup>35</sup> or (ii) in the absence of a 4d Order from the CFTC, in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules, established for an FCM to hold its customers' positions

proprietary assets, because segregation will assist customers in recovering assets in the event the intermediary fails. Absent such segregation, collateral could be used by an intermediary to fund its own business, and could be attached to satisfy the intermediary's debts were it to fail. Moreover, the maintenance of adequate capital and liquidity protects customers, CCPs, and other market participants. Adequate books and records (including both transactional and position records) are necessary to facilitate day to day operations as well as to help resolve situations in which an intermediary fails and either a regulatory authority or receiver is forced to liquidate the firm. Appropriate records also are necessary to allow examiners to review for improper activities, such as insider trading or fraud.

<sup>32</sup> This exemption specifically does not extend to the Exchange Act provisions applicable to government securities, as set forth in Section 15C, 15 U.S.C. 78o-5, and its underlying rules and regulations; nor does the exemption extend to related definitions found at paragraphs (42) through (45) of Section 3(a), 15 U.S.C. 78c(a). The Commission does not have authority under Section 36 to issue exemptions in connection with those provisions. See Exchange Act Section 36(b), 15 U.S.C. 78mm(b).

<sup>33</sup> 15 U.S.C. 78o(a)(1). This section generally provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission.

Section 3(a)(4) of the Exchange Act generally defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," but provides 11 exceptions for certain bank securities activities. 15 U.S.C. 78c(a)(4). Section 3(a)(5) of the Exchange Act generally defines a "dealer" as "any person engaged in the business of buying and selling securities for his own account," but includes exceptions for certain bank activities. 15 U.S.C. 78c(a)(5). Exchange Act Section 3(a)(6) defines a "bank" as a bank or savings association that is directly supervised and examined by state or federal banking authorities (with certain additional requirements for banks and savings associations that are not chartered by a federal authority or a member of the Federal Reserve System). 15 U.S.C. 78c(a)(6).

Certain reporting and other requirements of the Exchange Act may also apply to such persons, as broker-dealers, regardless of whether they are registered with the Commission.

<sup>34</sup> Registered broker-dealers are required to segregate assets held on behalf of customers from

<sup>35</sup> If the CFTC were to issue an order pursuant to Section 4d of the CEA ("4d Order"), Section 4d of the CEA and the related regulations would control the segregation and protection of customer funds and property. In that event, all collateral received from customers of FCMs in connection with purchasing, selling, or holding CDS positions would be subject to the requirements of CFTC Regulation 1.20, *et seq.* promulgated under Section 4d. These regulations require that customer positions and property be separately accounted for and segregated from the positions and property of an FCM. Customer property would be held under an account name that clearly identifies it as customer property and demonstrates that it is appropriately segregated as required by the CEA and Regulation 1.20, *et seq.*

and collateral in cleared OTC derivatives; or (iii) if both of those other two alternatives are not available, in an account established in accordance with CFTC Rule 30.7 (with additional disclosures to be made to the customer).<sup>36</sup>

Those conditions reflected our understanding that the protections associated with using CFTC Rule 30.7 to segregate collateral associated with over-the-counter derivatives are untested, and thus are less certain than those protections that would be afforded to collateral protected by Section 4d. The conditions also reflected the CFTC's proposal of a rule (on which CFTC has not taken action) to provide for the establishment of a new account class that would be designed to protect positions in cleared over-the-counter derivatives and collateral securing such positions in the event an FCM became insolvent.<sup>37</sup>

To date, the CFTC has not issued the 4d Order, and it has not taken final action on proposed rules that would establish a new account class. We remain mindful, however, of the benefits that may be expected to accompany central clearing of customer CDS transactions by CME. In that light, we have determined to renew this exemption on a temporary basis.<sup>38</sup>

Accordingly, in light of the risk management and systemic benefits in continuing to facilitate CDS clearing by CME while promoting customer protection in connection with those CDS transactions, the Commission finds pursuant to Section 36 of the Exchange Act that it is necessary or appropriate in the public interest and is consistent with the protection of investors to extend this temporary conditional exemption for certain CME clearing members from certain requirements of

<sup>36</sup> Rule 30.7 provides a mechanism for establishing accounts for holding collateral posted by foreign futures customers. When CME requested the exemptions that we granted in March 2009, it stated that, pending the receipt of the 4d Order, FCMs would hold customer collateral within accounts established pursuant to Rule 30.7.

When CME requested the relief granted to it in December 2009, it recognized the uncertainty associated with the protections provided by Rule 30.7, stating that "[n]either the CFTC nor the courts have issued an interpretation with regard to the bankruptcy protections that would be afforded to customers clearing OTC positions in 30.7 accounts, and it is therefore unclear whether they would receive the same protections as foreign futures customers." See Letter from Ann K. Shuman, Managing Director and Deputy General Counsel, CME, to Elizabeth Murphy, Secretary, Commission, Dec. 14, 2009.

<sup>37</sup> See 74 FR 40794 (Aug. 13, 2009).

<sup>38</sup> During the exemptive period we intend to monitor developments with regard to the protection afforded this collateral.

the Exchange Act in connection with Cleared CDS until November 30, 2010.

As before, this temporary conditional exemption will be available to any CME clearing member that is also an FCM (other than one that either is registered pursuant to Section 4f(a)(2) or is registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)) that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. Solely with respect to Cleared CDS, those members generally will be exempt from those provisions of the Exchange Act and the underlying rules and regulations that do not apply to security-based swap agreements. As with the exemption discussed above that is applicable to CME and certain eligible contract participants, and for the same reasons, this exemption for CME clearing members that receive or hold funds and securities does not extend to Exchange Act provisions that explicitly apply in connection with security-based swap agreements,<sup>39</sup> or to related enforcement authority provisions.<sup>40</sup> As with the exemption discussed above, we also are not exempting those members from Sections 5, 6, 12(a) and (g), 13, 14, 15(b)(4), 15(b)(6), 15(d), 16, and 17A of the Exchange Act.<sup>41</sup>

This temporary exemption is subject to the member complying with conditions that are important for protecting customer funds and securities. Any CME clearing member relying on this temporary exemption must be in material compliance with the rules of CME,<sup>42</sup> and in material compliance with applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS.<sup>43</sup> In addition, the customers for whom the clearing member receives or holds such funds or securities may not be natural persons, and the clearing member must make

<sup>39</sup> See note 23, *supra*.

<sup>40</sup> See note 28, *supra*.

<sup>41</sup> See notes 29 through 31, *supra*, and accompanying text. Nor are we exempting those members from provisions related to government securities, as discussed above. See note 32, *supra*.

<sup>42</sup> These include Rules 971 and 973 relating to Segregation and Secured Requirements and Customer Accounts with the Clearing House.

<sup>43</sup> The term "customer," solely for purposes of Part III.(d) and (e), *infra*, and corresponding references in this Order, means a "customer" as defined under CFTC Regulation 1.3(k). 17 CFR 1.3(k).

certain risk disclosures to those customers.<sup>44</sup>

As discussed above, this temporary exemption is further conditioned on funds or securities received or held by the clearing member for the purpose of purchasing, selling, clearing, settling, or holding cleared CDS positions for those customers being held: (i) In an account established in accordance with Section 4d of the CEA and CFTC Rules 1.20 through 1.30 and 1.32 thereunder, or (ii) in the absence of a 4d order from the CFTC, in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules,<sup>45</sup> established for an FCM to hold its customers' positions in cleared OTC derivatives (and funds and securities posted to margin, guarantee, or secure such positions); or (iii) if neither of those other accounts is available, those funds and securities must be held in an account established in accordance with CFTC Rule 30.7.<sup>46</sup>

To facilitate compliance with these segregation conditions, the clearing member—regardless of the type of account discussed above that it uses—also must annually provide CME with a self-assessment that it is in compliance with the requirements, along with a report by the clearing member's independent third-party auditor that attests to that assessment.<sup>47</sup> Finally, a CME clearing member that receives or holds funds or securities of customers for the purpose of purchasing, selling,

<sup>44</sup> The clearing member must disclose that it is not regulated by the Commission, that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member to collateralize Cleared CDS, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding.

<sup>45</sup> 17 CFR 190.01 *et seq.*

<sup>46</sup> In that situation, the clearing member must disclose to Cleared CDS customers that uncertainty exists as to whether they would receive priority in bankruptcy (*vis-à-vis* other customers) with respect to any funds or securities held by the clearing member to collateralize Cleared CDS positions.

The conditions in this Order require that any FCM that holds Cleared CDS customer funds and securities in a 30.7 account must segregate *all* such customer funds and securities in a 30.7 account. It is our understanding that this is consistent with CME Rule 8F03.

<sup>47</sup> The report must be dated the same date as the clearing member's annual audit report (but may be separate from it), and must be produced in accordance with the standards that the auditor follows in auditing the clearing member's financial statements.

This condition requiring the clearing member to convey a third-party audit report to CME as a repository for regulators does not impose upon CME any independent duty to audit or otherwise review that information. This condition also does not impose on CME any independent fiduciary or other obligation to any customer of a clearing member.

clearing, settling, or holding Cleared CDS positions shall segregate such funds and securities of customers from the CME clearing member's own assets (*i.e.*, the member may not permit the customers to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to "opt out").

*F. Extended Temporary Conditional General Exemption for Certain Registered Broker-Dealers Including Certain Broker-Dealer-FCMs*

The March 2009 and December 2009 CME exemptive orders granted temporary limited exemptions from Exchange Act requirements to registered broker-dealers in connection with their activities involving Cleared CDS. In crafting these temporary exemptions, we balanced the need to avoid creating disincentives to the prompt use of CCPs against the critical role that certain broker-dealers play in promoting market integrity and protecting customers (including broker-dealer customers that are not involved with CDS transactions).

In light of the risk management and systemic benefits in continuing to facilitate CDS clearing by CME through targeted conditional exemptions to registered broker-dealers, the Commission finds pursuant to Section 36 of the Exchange Act that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to extend this temporary conditional registered broker-dealer exemption from certain Exchange Act requirements until November 30, 2010.<sup>48</sup>

As before, consistent with the temporary exemptions discussed above, and solely with respect to Cleared CDS, we are temporarily exempting registered broker-dealers (including registered broker-dealers that are also FCMs ("BD-FCMs")) from provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements, subject to certain conditions. As discussed above, we are not excluding registered broker-dealers, including BD-FCMs, from Exchange Act provisions that explicitly apply in connection with security-based swap agreements or from

related enforcement authority provisions.<sup>49</sup> As above, and for similar reasons, we are not exempting registered broker-dealers, including BD-FCMs, from: Sections 5, 6, 12, 13, 14, 15(b)(4), 15(b)(6), 15(d), 16 and 17A of the Exchange Act.<sup>50</sup>

Further, we are not exempting registered broker-dealers from the following additional provisions under the Exchange Act: (1) Section 7(c),<sup>51</sup> regarding the unlawful extension of credit by broker-dealers; (2) Section 15(c)(3),<sup>52</sup> regarding the use of unlawful or manipulative devices by broker-dealers; (3) Section 17(a),<sup>53</sup> regarding broker-dealer obligations to make, keep, and furnish information; (4) Section 17(b),<sup>54</sup> regarding broker-dealer records subject to examination; (5) Regulation T,<sup>55</sup> a Federal Reserve Board regulation regarding extension of credit by broker-dealers; (6) Exchange Act Rule 15c3-1,<sup>56</sup> regarding broker-dealer net capital; (7) Exchange Act Rule 15c3-3,<sup>57</sup> regarding broker-dealer reserves and custody of securities; (8) Exchange Act Rules 17a-3 through 17a-5,<sup>58</sup> regarding records to be made and preserved by broker-dealers and reports to be made by broker-dealers; and (9) Exchange Act Rule 17a-13,<sup>59</sup> regarding quarterly security counts to be made by certain exchange members and broker-dealers.<sup>60</sup> Registered broker-dealers must comply with these provisions in

<sup>49</sup> See notes 23 and 28, *supra*. As noted above, broker-dealers also would be subject to Section 15(c)(1) of the Exchange Act, which prohibits brokers and dealers from using manipulative or deceptive devices, because that provision explicitly applies in connection with security-based swap agreements. In addition, to the extent the Exchange Act and any rule or regulation thereunder imposes any other requirement on a broker-dealer with respect to security-based swap agreements (*e.g.*, requirements under Rule 17h-1T to maintain and preserve written policies, procedures, or systems concerning the broker or dealer's trading positions and risks, such as policies relating to restrictions or limitations on trading financial instruments or products), these requirements would continue to apply to broker-dealers' activities with respect to Cleared CDS.

<sup>50</sup> See notes 29 through 31, *supra*, and accompanying text. We also are not exempting those members from provisions related to government securities, as discussed above. See note 32, *supra*.

<sup>51</sup> 15 U.S.C. 78g(c).

<sup>52</sup> 15 U.S.C. 78o(c)(3).

<sup>53</sup> 15 U.S.C. 78q(a).

<sup>54</sup> 15 U.S.C. 78q(b).

<sup>55</sup> 12 CFR 220.1 *et seq.*

<sup>56</sup> 17 CFR 240.15c3-1.

<sup>57</sup> 17 CFR 240.15c3-3.

<sup>58</sup> 17 CFR 240.17a-3 through 240.17a-5.

<sup>59</sup> 17 CFR 240.17a-13.

<sup>60</sup> Solely for purposes of this temporary exemption, in addition to the general requirements under the referenced Exchange Act sections, registered broker-dealers shall only be subject to the enumerated rules under the referenced Exchange Act sections.

connection with their activities involving non-excluded CDS because these provisions are especially important to helping protect customer funds and securities, ensure proper credit practices, and safeguard against fraud and abuse.<sup>61</sup>

CME clearing members that are BD-FCMs and that receive or hold customer funds or securities for the purpose of purchasing, selling, clearing, settling, or holding CDS positions cleared by CME in a futures account (as that term is defined in Rule 15c3-3(a)(15)<sup>62</sup>) also shall be exempt from Exchange Act Rule 15c3-3, subject to conditions that are similar to those—discussed above—that are applicable to CME that are not broker-dealers and that hold customer funds and securities in connection with Cleared CDS transactions. Thus, such BD-FCMs must be in material compliance with CME rules, as well as and applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS. A BD-FCM may not receive or hold funds or securities relating to Cleared CDS transactions and positions for customers who are natural persons. In addition, the BD-FCM must make certain risk disclosures to each such customer.<sup>63</sup> Further, the BD-FCM must hold the customer funds or securities in the same type of account (*e.g.*, in a 4d account) as is required for other clearing members that hold customer funds and securities in connection with Cleared CDS transactions.<sup>64</sup> The BD-FCM also must

<sup>61</sup> Indeed, Congress directed the Commission to promulgate broker-dealer financial responsibility rules, including rules relating to custody, the use of customer securities, the use of customers' deposits or credit balances, and the establishment of minimum financial requirements. See Exchange Act Section 15(c)(3).

<sup>62</sup> 17 CFR 240.15c3-3(a)(15).

<sup>63</sup> The BD-FCM must disclose that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member to collateralize Cleared CDS positions, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding.

This BD-FCM condition differs from the analogous disclosure condition related to other CME clearing members that hold customer funds and securities, in that the other condition also requires disclosure that the clearing member is not regulated by the Commission.

<sup>64</sup> As with the exemption applicable to those other CME clearing members, in the absence of a 4d order from the CFTC, the BD-FCM may hold the funds and securities in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules, established for an FCM to hold its customers' positions in cleared OTC derivatives (and funds and securities posted to margin,

<sup>48</sup> The temporary exemptions addressed above—with regard to CME, certain clearing members, and certain eligible contract participants—are not available to persons that are registered as broker-dealers with the Commission (other than those that are notice registered pursuant to Exchange Act Section 15(b)(11)). Exchange Act Section 15(b)(11) provides for notice registration of certain persons that effect transactions in security futures products. 15 U.S.C. 78o(b)(11).



segregate the funds and securities of customers from the CME clearing member's own assets (*i.e.*, the member may not permit the customers to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to "opt out"). In addition, the BD-FCM also must annually provide CME with a self-assessment that it is in compliance with the requirements, along with a report by the clearing member's independent third-party auditor that attests to that assessment.<sup>65</sup>

Finally—and in addition to the conditions that are applicable to CME that are not broker-dealers and that hold customer funds and securities in connection with Cleared CDS transactions—the CME clearing member must comply with the margin rules for Cleared CDS of the self-regulatory organization that is its designated examining authority<sup>66</sup> (*e.g.*, FINRA).

### G. Solicitation of Comments

When we granted the March 2009 and December 2009 orders extending the exemptions granted in connection with CDS clearing by CME, we requested comment on all aspects of the exemptions. We received no comments in response to these requests.

In connection with this Order extending the exemptions granted in connection with CDS clearing by CME, we reiterate our request for comments on all aspects of the exemptions. We particularly request comment on the adequacy of the proposed conditions for the protection of customer assets, including whether it is appropriate to permit such assets to be protected in an account that is subject to the framework provided by CFTC Rule 30.7, and, if so, whether the conditions associated with the use of that account are adequate.

guarantee, or secure such positions). See Part II.E, *supra*.

If that alternative also is not available, the BD-FCM must hold the funds and securities in an account established in accordance with CFTC Rule 30.7. In that situation, the clearing member must disclose to Cleared CDS customers that uncertainty exists as to whether they would receive priority in bankruptcy (*vis-à-vis* other customers) with respect to any funds or securities held by the clearing member to collateralize Cleared CDS positions.

As above, the conditions in this Order require that BD-FCM (as well as any other FCM) that holds Cleared CDS customer funds and securities in a 30.7 account must segregate *all* such customer funds and securities in a 30.7 account.

<sup>65</sup> The report must be dated the same date as the clearing member's annual audit report (but may be separate from it), and must be produced in accordance with the standards that the auditor follows in auditing the clearing member's financial statements. See text accompanying note 57, *supra*.

<sup>66</sup> See 17 CFR 240.17d-1 for a description of a designated examining authority.

Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-06-09 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### 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 S7-06-09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/other.shtml>). Comments are also 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

### III. Conclusion

*It is hereby ordered*, pursuant to Section 36(a) of the Exchange Act, that, until November 30, 2010:

(a) Exemption from Section 17A of the Exchange Act.

The Chicago Mercantile Exchange Inc. ("CME") shall be exempt from Section 17A of the Exchange Act solely to perform the functions of a clearing agency for Cleared CDS (as defined in paragraph (f) of this Order), subject to the following conditions:

- (1) CME shall make available on its Web site its annual audited financial statements.
- (2) CME shall keep and preserve records of all activities related to the business of CME as a central counterparty for Cleared CDS. These records shall be kept for at least five years and for the first two years shall be held in an easily accessible place.
- (3) CME shall supply such information and periodic reports relating to its Cleared CDS clearance and settlement services as may be

reasonably requested by the Commission. CME shall also provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), and records related to its Cleared CDS clearance and settlement services. CME will provide the Commission with access to its personnel to answer reasonable questions during any such inspections related to its Cleared CDS clearance and settlement services.

(4) CME shall notify the Commission, on a monthly basis, of any material disciplinary actions taken against any CME clearing members utilizing its Cleared CDS clearance and settlement services, including the denial of services, fines, or penalties. CME shall notify the Commission promptly when CME involuntarily terminates the membership of an entity that is utilizing CME's Cleared CDS clearance and settlement services. Both notifications shall describe the facts and circumstances that led to CME's disciplinary action.

(5) CME shall notify the Commission of all changes to rules as defined under the CFTC rules, fees, and any other material events affecting its Cleared CDS clearance and settlement services, including material changes to risk management models. In addition, CME will post any rule or fee changes on the CME Web site. CME shall provide the Commission with notice of all changes to its rules not less than one day prior to effectiveness or implementation of such rule changes or, in exigent circumstances, as promptly as reasonably practicable under the circumstances. Such notifications will not be deemed rule filings that require Commission approval.

(6) CME shall provide the Commission with annual reports and any associated field work concerning its Cleared CDS clearance and settlement services prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements. CME shall provide the Commission (beginning in its first year of operation) with its annual audited financial statements prepared by independent audit personnel for CME.

(7) CME shall report to the Commission all significant outages of clearing systems having a material impact on its Cleared CDS clearance and settlement services. If it appears that the outage may extend for 30 minutes or longer, CME shall report the systems outage immediately. If it appears that the outage will be resolved in less than

30 minutes, CME shall report the systems outage within a reasonable time after the outage has been resolved.

(8) CME, directly or indirectly, shall make available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that CME may establish to calculate settlement variation or margin requirements for CME clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by CME.

(9) CME shall not materially change its methodology for determining Cleared CDS margin levels without prior written approval from the Commission staff, and from FINRA with respect to customer margin requirements that would apply to broker-dealers.

(b) Exemption from Sections 5 and 6 of the Exchange Act.

(1) CME shall be exempt from the requirements of Sections 5 and 6 of the Exchange Act and the rules and regulations thereunder in connection with its calculation of settlement prices for Cleared CDS, subject to the following conditions:

(i) CME shall report the following information with respect to its determination of daily settlement prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports for as long as CME offers CDS clearing services and for a period of at least five years thereafter:

(A) The total dollar volume of CDS transactions executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index; and

(B) The total unit volume or notional amount executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index;

(ii) CME shall establish and maintain adequate safeguards and procedures to protect participants' confidential trading information related to Cleared CDS. Such safeguards and procedures shall include:

(A) Limiting access to the confidential trading information of participants to those CME employees who have a need to access such information in connection with the provision of CME CDS clearing services or who are responsible for compliance with this exemption or any other applicable rules; and

(B) Implementing policies and procedures for CME employees with access to such information with respect

to trading for their own accounts. CME shall adopt and implement adequate oversight procedures to ensure that the policies and procedures established pursuant to this condition are followed; and

(iii) CME shall satisfy the conditions of the temporary exemption from Section 17A of the Exchange Act set forth in paragraphs (a)(1)–(9) of this Order.

(2) Any CME clearing member shall be exempt from the requirements of Section 5 of the Exchange Act to the extent such CME clearing member uses any facility of CME to effect any transaction in Cleared CDS, or to report any such transaction, in connection with CME's clearance and risk management process for Cleared CDS.

(c) Exemption for CME and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (c)(2) is available to:

(i) CME; and

(ii) Any eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), other than:

(A) An eligible contract participant that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons;

(B) An eligible contract participant that is a self-regulatory organization, as that term is defined in Section 3(a)(26) of the Exchange Act; or

(C) A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof).

(2) Scope of exemption.

(i) In general. Subject to the condition specified in paragraph (c)(3), such persons generally shall, solely with respect to Cleared CDS, be exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply in connection with security-based swap agreements. Accordingly, under this exemption, those persons would remain subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements (*i.e.*, paragraphs (2) through (5) of Section 9(a), Section 10(b), Section 15(c)(1), subsections (a) and (b) of Section 16, Section 20(d), and Section 21A(a)(1), and the rules thereunder that explicitly are applicable to security-based swap agreements). All provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential

violations of such provisions also remain applicable.

(ii) Exclusions from exemption. The exemption in paragraph (c)(2)(i), however, does not extend to the following provisions under the Exchange Act:

(A) Paragraphs (42), (43), (44), and (45) of Section 3(a);

(B) Section 5;

(C) Section 6;

(D) Section 12 and the rules and regulations thereunder;

(E) Section 13 and the rules and regulations thereunder;

(F) Section 14 and the rules and regulations thereunder;

(G) Paragraphs (4) and (6) of Section 15(b);

(H) Section 15(d) and the rules and regulations thereunder;

(I) Section 15C and the rules and regulations thereunder;

(J) Section 16 and the rules and regulations thereunder; and

(K) Section 17A (other than as provided in paragraph (a)).

(3) Condition for CME clearing members. Any CME clearing member relying on this exemption must be in material compliance with the rules of CME.

(d) Exemption for certain CME clearing members.

Any CME clearing member registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act (but that is not registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)) that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS for other persons shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (c)(2), solely with respect to Cleared CDS, subject to the following conditions:

(1) The clearing member shall be in material compliance with the rules of CME (including Rules 971 and 973 relating to Segregation and Secured Requirements and Customer Accounts with the Clearing House), and also shall be in material compliance with applicable laws and regulations, relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS;

(2) The customers for whom the clearing member receives or holds such funds or securities shall not be natural persons;

(3) The clearing member shall disclose to such customers that the clearing member is not regulated by the

Commission, that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member to collateralize Cleared CDS positions, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding;

(4) Customer funds and securities received or held by the clearing member for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for such customers shall be held in one of the following manners:

(i) In an account established in accordance with section 4d of the Commodity Exchange Act and CFTC Rules 1.20 through 1.30 and 1.32 [17 CFR 1.20 through 1.30 and 1.32] thereunder;

(ii) In the absence of an Order from the Commodity Futures Trading Commission ("CFTC") permitting the use of an account specified in subparagraph (d)(4)(i) for holding such funds and securities, in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules [17 CFR 190.01 *et seq.*], established for a futures commission merchant to hold its customers' positions in cleared OTC derivatives (and funds and securities posted to margin, guarantee, or secure such positions); or

(iii) If the clearing member is unable to hold such funds and securities as specified in subparagraph (d)(4)(i) or (ii), the clearing member shall:

(A) Hold such funds and securities in a separate account that is established in accordance with CFTC Rule 30.7 [17 CFR 30.7], and

(B) Disclose to such customers that uncertainty exists as to whether they would receive priority in bankruptcy (*vis-à-vis* other customers) with respect to any funds or securities held by the clearing member to collateralize Cleared CDS positions.

(5) The clearing member annually shall provide CME with

(i) An assessment by the clearing member that it is in compliance with all the provisions of subparagraphs (d)(4)(i) through (iii) in connection with such activities, and

(ii) A report by the clearing member's independent third-party auditor that attests to, and reports on, the clearing member's assessment described in subparagraph (d)(5)(i) and that is:

(A) Dated as of the same date as, but which may be separate and distinct from, the clearing member's annual audit report;

(B) Produced in accordance with the auditing standards followed by the independent third-party auditor in its audit of the clearing member's financial statements.

(6) To the extent that the clearing member receives or holds funds or securities of customers for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions, the clearing member shall segregate such funds and securities of customers from the clearing member's own assets (*i.e.*, the member may not permit such customers to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to "opt out").

(e) Exemption for certain registered broker-dealers.

(1) In general. A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (c)(2), solely with respect to Cleared CDS, except:

- (i) Section 7(c);
- (ii) Section 15(c)(3);
- (iii) Section 17(a);
- (iv) Section 17(b);
- (v) Regulation T, 12 CFR 200.1 *et seq.*;
- (vi) Rule 15c3-1;
- (vii) Rule 15c3-3;
- (viii) Rule 17a-3;
- (ix) Rule 17a-4;
- (x) Rule 17a-5; and
- (xi) Rule 17a-13.

(2) Broker-dealers that also are futures commission merchants. A CME clearing member that is a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) and that is also registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act and that receives or holds customer funds and securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS in a futures account (as that term is defined in Rule 15c3-3(a)(15) [17 CFR 240.15c3-3(a)(15)]) also shall be exempt from Exchange Act Rule 15c3-3, subject to the following conditions:

(i) The clearing member shall comply with the conditions set forth in paragraphs (d)(1), (2), (4), (5), and (6) above;

(ii) The clearing member shall disclose to Cleared CDS customers that the U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to funds or securities held by the clearing member to collateralize Cleared CDS positions, and that the

applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding; and

(iii) The CME clearing member shall collect from each customer the amount of margin that is not less than the amount required for Cleared CDS under the margin rule of the self-regulatory organization that is its designated examining authority.

(f) For purposes of this Order, "Cleared CDS" shall mean a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to CME, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which:

(1) The reference entity, the issuer of the reference security, or the reference security is one of the following:

- (i) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;
- (ii) A foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;
- (iii) A foreign sovereign debt security;
- (iv) An asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or
- (v) An asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae; or

(2) The reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (f)(1).

#### IV. Paperwork Reduction Act

Certain provisions of this Order contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.<sup>67</sup> The Commission has submitted the proposed amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

<sup>67</sup> 44 U.S.C. 3501 *et seq.*

### A. Collection of Information

As discussed above, the Commission has found it to be necessary or appropriate in the public interest and consistent with the protection of investors to grant the temporary conditional exemptions discussed in this Order until November 30, 2010. Among other things, the Order requires CME clearing members that receive or hold customers' funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions to: (a) Make certain disclosures to those customers; (b) make additional disclosures to those customers if the clearing member holds such funds and securities in an account established in accordance with Commodity Futures Trading Commission Rule 30.7 (which would be permitted only if certain other types of accounts are not available for holding the collateral); and (c) provide CME with a self-assessment as to its compliance with certain exemptive conditions, and obtain a separate report, as part of its annual audit report, as to its compliance with the conditions of the Order regarding protection of customer assets.

### B. Proposed Use of Information

These collection of information requirements are designed to inform Cleared CDS customers that their ability to recover assets placed with the clearing member are dependent on the applicable insolvency regime, to provide additional information about the potential risks associated with 30.7 accounts, provide Commission staff with access to information regarding whether clearing members are complying with the conditions of this Order, and provide documentation helpful for the protection of Cleared CDS customers' funds and securities.

### C. Respondents

Based on conversations with industry participants, the Commission understands that approximately 12 firms may be presently engaged as CDS dealers and thus may seek to become a clearing member of CME. In addition, 8 more firms may enter into this business. Consequently, the Commission estimates that CME, like the other CCPs that clear CDS transactions, may have up to 20 clearing members.

### D. Total Annual Reporting and Recordkeeping Burden

Paragraph III.(d)(3) of the Order requires that any CME clearing member holding customer collateral in connection with cleared customer CDS transactions that seeks to rely on the

exemptive relief specified in paragraph III.(d) of the Order to disclose to those customers that the clearing member is not regulated by the Commission, that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities it holds, and that the applicable insolvency law may affect the customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding. The Commission believes that clearing members could use the language in the Order that describes the disclosure that must be made as a template to draft the disclosure. Consequently the Commission estimates, based on staff experience, that it would take a clearing member approximately one hour to draft the disclosure. Further, the Commission believes clearing members will include this disclosure with other documents or agreements provided to cleared CDS customers, and estimates (based on staff experience) that a clearing member may take approximately one half hour to determine how the disclosure should be integrated into those other documents or agreements, resulting in a one-time aggregate burden of 30 hours for all 20 clearing members to comply with this requirement.<sup>68</sup>

Paragraph III.(d)(4)(iii)(B) of this Order further provides that if a CME clearing member holds customer collateral in connection with cleared CDS transactions in an account established in accordance with CFTC Rule 30.7, the clearing member must disclose to those customers that uncertainty exists as to whether they would receive priority in bankruptcy (vis-à-vis other customers) with respect to any funds or securities held by the clearing member to collateralize cleared CDS positions.<sup>69</sup> Here too, the Commission believes that clearing members could use the language in this Order that describes the disclosure that must be made as a template to draft the disclosure. Consequently the Commission estimates, based on staff experience, that it would take a CME clearing member approximately one hour to draft the disclosure. Further, the Commission believes clearing members will include this disclosure with other

<sup>68</sup> 30 hours = (1 hour per clearing member to draft the disclosure + 1/2 hour per clearing member to determine how the disclosure should be integrated into those other documents or agreements) × 20 clearing members.

<sup>69</sup> CME clearing members will not be allowed to hold customer assets relating to cleared CDS in a 30.7 account if certain other options for segregating cleared CDS customer assets (e.g., an account established in accordance with Section 4d of the Commodity Exchange Act) become available.

documents or agreements provided to cleared CDS customers, and estimates (based on staff experience) that a clearing member may take approximately one half hour to determine how the disclosure should be integrated into those other documents or agreements, resulting in a one-time aggregate burden of 30 hours for all 20 clearing members to comply with this requirement.<sup>70</sup>

Paragraph III.(d)(5) of the Order requires CME clearing members that receive or hold customers' funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions annually to provide CME with an assessment that it is in compliance with all the provisions of paragraphs III.(d)(4)(i) through (iii) of that order in connection with such activities, and a report by the clearing member's independent third-party auditor, as of the same date as the firm's annual audit report,<sup>71</sup> that attests to, and reports on, the clearing member's assessment. The Commission estimates that it will take each clearing member approximately five hours each year to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements.<sup>72</sup> Further, the Commission estimates that it will cost each clearing member approximately \$100,000 more each year to have its auditor prepare this special report as part of its audit of the clearing member.<sup>73</sup> Consequently, the Commission estimates that compliance with this requirement will result in an

<sup>70</sup> 30 hours = (1 hour per clearing member to draft the disclosure + 1/2 hour per clearing member to determine how the disclosure should be integrated into those other documents or agreements) × 20 clearing members.

<sup>71</sup> The Commission intends for this requirement to be performed in conjunction with the firm's annual audit report.

<sup>72</sup> This estimate is based on burden estimates published with respect to other Commission actions that contained similar certification requirements (see e.g., Securities Act Release No. 8138 (Oct. 9, 2002), 67 FR 66208 (Oct. 30, 2002), and the burden associated with the Disclosure Required by the Sarbanes-Oxley Act of 2002, including requirements relating to internal control reports).

<sup>73</sup> This estimate is based on staff conversations with an audit firm. That firm suggested that the cost of such an audit report could range from \$10,000 to \$1 million, depending on the size of the clearing member, the complexity of its systems, and whether the work included a review of other systems already being reviewed as part of audit work the firm is already providing to the clearing member. While this condition would require that the auditor create a separate report, the auditor already must review custody of customer assets pursuant to CFTC Rule 17 CFR 1.16(d)(1). Consequently, the Commission believes the cost of this requirement for FCMs will be lower than it would be for other types of entities that are not subject to a specific audit requirement to review custody of customer assets.

aggregate annual burden of 100 hours for all 20 clearing members, and that the total additional cost of this requirement will be approximately \$2,000,000 each year.<sup>74</sup>

In sum, the Commission estimates that the total additional burden associated with all of the conditions contained in the exemptive order would be approximately 160 hours,<sup>75</sup> and that the total additional cost associated with compliance with the exemptive order would be approximately \$2 million.<sup>76</sup>

#### *E. Collection of Information is Mandatory*

The collections of information contained in the conditions to this Order are mandatory for any entity wishing to rely on the exemptions granted by that order.

#### *F. Confidentiality*

Certain of the conditions of the this Order that address collections of information require CME clearing members to make disclosures to their customers, or to provide other information to CME.

#### *G. Request for Comment on Paperwork Reduction Act Issues*

The Commission requests, pursuant to 44 U.S.C. 3506(c)(2)(B), comment on the collections of information contained in this Order to:

(i) Evaluate whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;

<sup>74</sup> 100 hours = (5 hours for each clearing member to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements × 20 clearing members). \$2 million = \$100,000 per clearing member × 20 clearing members.

<sup>75</sup> 160 hours = (30 hours to draft the general disclosure and determine how the disclosure should be integrated into those other documents or agreements + 30 hours to draft the 30.7-specific disclosure and determine how the disclosure should be integrated into those other documents or agreements + 100 hours per year to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements). This total burden includes one-time burdens of 60 hours (= 30 hours to draft the general disclosure and determine how the disclosure should be integrated into those other documents or agreements + 30 hours to draft the 30.7-specific disclosure and determine how the disclosure should be integrated into those other documents or agreements) and annual burdens of 100 hours (100 hours per year to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements).

<sup>76</sup> The estimated cost of the additional audit report. See footnote 74 and accompanying text.

(ii) Evaluate the accuracy of the Commission's estimates of the burden of the collections of information;

(iii) Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) Evaluate whether there are ways to minimize the burden of the collections of information on those required to respond, including through the use of automated collection techniques or other forms of information technology.

Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, and refer to File No. S7–06–09. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this document in the **Federal Register**; therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication. The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–06–09, and be submitted to the Securities and Exchange Commission, Records Management Office, 100 F Street, NE., Washington, DC 20549.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–7629 Filed 4–2–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61802; File No. SR–Phlx–2010–05]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to Professional Orders

March 30, 2010.

#### I. Introduction

On January 12, 2010, the NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change 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> to amend the Exchange's priority rules to treat certain non-broker-dealers in the same manner as off-floor broker-dealers with respect to priority. The proposed rule change was published for comment in the **Federal Register** on February 2, 2010.<sup>3</sup> The Exchange filed Amendment No. 1 to the proposed rule change on March 26, 2010.<sup>4</sup> The Exchange filed Amendment No. 2 to the proposed rule change on March 30, 2010.<sup>5</sup> This order provides notice of Amendment No. 2 and approves the proposal, as modified by Amendment No. 2, on an accelerated basis.

#### II. Description of Phlx's Proposal

Phlx proposes to adopt a new term, “professional,” which would be defined in paragraph (b)(14) of Phlx Rule 1000

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 61426 (January 26, 2010), 75 FR 5360 (February 2, 2010) (“Notice”).

<sup>4</sup> Amendment No. 2 replaces and supersedes Amendment No. 1 in its entirety.

<sup>5</sup> Amendment No. 2 adds Phlx Rule 1033(e), which provides for public customer priority in synthetic options orders in open outcry, and Options Floor Procedure Advices (“Advices”) B–6, B–11 and F–5 to the list of Phlx rules in which a Professional (as defined below) would be treated in the same manner as an off-floor broker-dealer. In Amendment No. 2, Phlx also clarifies that Professional orders may be considered customer orders subject to facilitation for purposes of Phlx Rule 1064.02, and corrects a technical error by revising the reference to Advice C–3 to Advice C–2. Phlx further states in this amendment that it would issue a notice outlining the procedures for the implementation of the proposal. Amendment No. 2 also deletes a sentence in the Purpose section of the proposal, in which the Exchange stated that Professional orders would be subject to the same transactions fees as customers today; changes “may” to “will” in the parenthetical regarding the definition of “professional” for Phlx Rule 1064.02; and changes “five days” to “five business days” in footnote 8 in the Purpose Section and the Exhibit.