

SUPPORTING STATEMENT FOR PROPOSED RULES UNDER THE SECURITIES ACT OF 1933

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq.

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

In Release No. 33-9222,¹ the Securities and Exchange Commission (the “Commission”) proposed rules that provide exemptions under the Securities Act of 1933 (the “Securities Act”), the Securities Exchange Act of 1934 (the “Exchange Act”), and the Trust Indenture Act of 1939 for security-based swaps issued by certain clearing agencies satisfying certain conditions. Proposed Rule 239 under the Securities Act would exempt the offer and sale of security-based swaps that are or will be issued to eligible contract participants by, and in a transaction involving, a clearing agency that is registered under Exchange Act Section 17A or exempt from such registration by rule, regulation or order of the Commission, from all provisions of the Securities Act, except the anti-fraud provisions of Section 17(a), subject to certain conditions. One condition to the availability of the proposed exemption would be that the registered or exempt clearing agency discloses, either in its agreement regarding the security-based swap or on its publicly available website, certain information with respect to the security-based swap.

Certain provisions of proposed Rule 239 would result in “collection of information requirements” within the meaning of the Paperwork Reduction Act of 1995. The title for this collection of information is:

- “Rule 239” (a proposed new collection of information).

Proposed Rule 239 is a newly proposed collection of information. The disclosure provisions of proposed Rule 239 would apply to registered or exempt clearing agencies relying on the proposed exemption from the registration requirements of the Securities Act.

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The purpose of the information collection in proposed Rule 239 would be to make certain information about security-based swaps that may be cleared by the registered or exempt clearing agency available to eligible contract participants and other market participants.

¹ Exemptions for Security-Based Swaps Issued by Certain Clearing Agencies, Release No. 33-9222 (June 9, 2011), 76 FR 34933 (June 15, 2011).

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

Proposed Rule 239 disclosure would not be filed with the Commission.

4. DUPLICATION OF INFORMATION

We are not aware of any rules that would conflict with or substantially duplicate the proposed rules.

5. REDUCING THE BURDEN ON SMALL ENTITIES

The exemptions would apply to any registered or exempt clearing agency that issues or will issue security-based swaps in its function as a central counterparty. Currently, four entities are exempt from registration as a clearing agency under Exchange Act Section 17A to provide central clearing services for credit default swaps, a class of security-based swaps.² Based on our understanding of the market, we preliminarily believe that between four and six clearing agencies will clear security-based swaps and would seek to avail themselves of the proposed exemptions.³

A small entity includes, when used with reference to a clearing agency, a clearing agency that: (i) compared, cleared and settled less than \$500 million in securities transactions during the preceding fiscal year; (ii) had less than \$200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter); and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.⁴ Under the standards adopted by the Small Business Administration, small entities in the finance industry include the following: (i) for entities engaged in investment banking, securities dealing and securities brokerage activities, entities with \$6.5 million or less in annual receipts; (ii) for entities engaged in trust, fiduciary and custody activities, entities with \$6.5 million or less in annual receipts; and (iii) funds, trusts and other financial vehicles with \$6.5 million or less in annual receipts.⁵

Based on our existing information about the entities likely to register to clear security-based swaps, the Commission preliminarily believes that such entities will not be small entities, but rather part of large business entities that exceed the thresholds defining “small entities” set out above. Additionally, while other clearing agencies may become

² These clearing agencies are ICE Trust U.S. LLC, Chicago Mercantile Exchange Inc., ICE Clear Europe, Ltd., and Eurex Clearing AG.

³ See also Section VIII. of Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations, Release No. 34-63557 (Dec. 15, 2010), 75 FR 82490 (Dec. 30, 2010) (“Mandatory Clearing Proposing Release”).

⁴ 17 CFR 240.0-10(d).

⁵ 13 CFR 121.201, Sector 52.

eligible to operate as central counterparties for security-based swaps, we preliminarily do not believe that any such entities would be “small entities” as defined in Exchange Act Rule 0-10.⁶ Furthermore, we believe it is unlikely that clearing agencies functioning as central counterparties for security-based swaps would have annual receipts of less than \$6.5 million. Accordingly, we believe that any clearing agencies issuing security-based swaps in their function as central counterparties in such transactions will exceed the thresholds for “small entities” set forth in Exchange Act Rule 0-12.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

The objectives of making certain information about security-based swaps that may be cleared by the registered or exempt clearing agency available to eligible contract participants and other market participants could not be met with less frequent collection of this information.

7. SPECIAL CIRCUMSTANCES

None.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission has issued a **proposing** release soliciting comment on the new “collection of information” requirements and the associated paperwork burdens. A copy of this release is attached. Comments on Commission releases are generally received from registrants, investors and other market participants. In addition, the Commission and staff of the Division of Corporation Finance participate in an ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. The Commission will consider all comments received. Comments can be found at <http://www.sec.gov/comments/s7-22-11/s72211.shtml>.

9. PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. CONFIDENTIALITY

Proposed Rule 239 information would not be filed with the Commission; it would be made publicly available on the registered or exempt clearing agency’s website or in an agreement the clearing agency provides or makes available to its counterparty to the security-based swap transaction. The collection of information would not be kept confidential.

11. SENSITIVE QUESTIONS

Not applicable.

⁶ See 17 CFR 240.0-10(d).

12/13. ESTIMATES OF HOUR AND COST BURDENS

We estimate that there will be an annual incremental increase in the paperwork burden for clearing agencies as issuers of security-based swaps to comply with the proposed collection of information requirements. The disclosure provisions of proposed Rule 239 would apply to registered or exempt clearing agencies relying on the proposed exemption from the registration requirements of the Securities Act. The disclosure provisions of the proposed rule would make certain information about security-based swaps that may be cleared by the registered or exempt clearing agency available to eligible contract participants and other market participants.

As noted above, four clearing agencies are authorized to clear credit default swaps, which include security-based swaps, pursuant to temporary conditional exemptions under Exchange Act Section 36.⁷ The obligation to centrally clear certain security-based swap transactions is a new requirement under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and we anticipate that clearing agencies operating under temporary conditional exemptions will register or will be deemed registered as clearing agencies eligible to clear security-based swaps.⁸ Based on the fact that there are currently four clearing agencies authorized to clear security-based swaps and that there could conceivably be a few more in the foreseeable future,⁹ we preliminarily estimate that four to six clearing agencies may plan to centrally clear security-based swaps and seek to rely on the proposed exemptions, and therefore, would be subject to the collection of information. For purposes of the PRA, we estimate six clearing agencies would seek to rely on the proposed exemptions.

We preliminarily believe that a registered or exempt clearing agency issuing security-based swaps in its function as a central counterparty could incur some costs associated with disclosing, or providing or making available, certain information in accordance with proposed Rule 239, either in its agreement regarding the security-based swap or on its publicly available website, with respect to the security-based swap. A clearing agency also could incur costs associated with updating the information on its website or in its agreements, if necessary. The purpose of the proposed requirement is to inform investors about whether there is publicly available information about the issuer of the referenced security or referenced issuer and we believe that a clearing agency likely

⁷ 15 U.S.C. 78mm. Of the four clearing agencies granted temporary exemptions from registration, only three have cleared products that likely are classified as security-based swaps under Title VII of the Dodd-Frank Act.

⁸ See Pub. L. No. 111-203, § 763(b).

⁹ We do not expect there to be a large number of clearing agencies that clear security-based swaps, based on the significant level of capital and other financial resources necessary for the formation of a clearing agency.

already would be collecting and making public the type of information required by the proposed rule.¹⁰

We preliminarily estimate that each registered or exempt clearing agency issuing security-based swaps in its function as a central counterparty will spend approximately 2 hours each time it provides or updates the information in its agreements relating to security-based swaps or on its website.¹¹ We estimate that each registered or exempt clearing agency will provide or update the information 20 times per year.¹² Therefore, we preliminarily estimate that the total annual reporting burden for clearing agencies to provide the information in their agreements relating to security-based swaps or on their website to comply with proposed Rule 239 will be 240 hours (20 x 2 hours x 6 respondents). We estimate that 75% of the burden of preparation is carried by the clearing agency internally and that 25% of the burden is carried by outside professionals retained by the clearing agency at an average cost of \$400 per hour. As such, we estimate that the total cost of the burden of preparation will be \$24,000 and the total annual reporting burden hours will be 180 hours.

14. COSTS TO FEDERAL GOVERNMENT

Not applicable.

15. REASON FOR CHANGE IN BURDEN

Not applicable. This is a new collection of information.

¹⁰ We proposed rules in The Mandatory Clearing Proposing Release and Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, Release No. 63346 (Nov. 19, 2010), 75 FR 75207 (Dec. 2, 2010), that would require some of the same information as the requirements proposed here (e.g., information relating to the identity of the security or issuer underlying the security-based swap). Although the proposed information requirements also may be required to be made public by the registered or exempt clearing agencies by these other proposed rules, we are calculating the information burden for each process individually without accounting for any reduction due to the anticipated overlap. We have decided to calculate the burdens in this manner in order to provide a conservative estimate.

¹¹ In the Mandatory Clearing Proposing Release, we estimated that four hours would be required by a clearing agency to post a security-based swap submission on its website to comply with proposed Exchange Act Rule 19b-4(o)(5). We believe that the information that would be required to rely on the exemptions proposed in this release is less extensive than the information that would be required in a security-based swap submission. Therefore, we estimate that the burden to include the information that would be required to rely on the proposed exemptions in an agreement or on the clearing agency's website would be less than the burden to post a security-based swap submission.

¹² In the Mandatory Clearing Proposing Release, we estimated that each clearing agency will submit 20 security-based swap submissions annually. Thus, we are using that estimate as the basis for our estimate as to how many times per year a clearing agency would be required to provide the information in reliance on the proposed exemptions.

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

Not applicable.

17. DISPLAY OF OMB APPROVAL DATE

We request authorization to omit the expiration date on the electronic version of this form for design and scheduling reasons. The OMB control number will be displayed.

18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS

Not applicable.

B. STATISTICAL METHODS

Not applicable.