

SUPPORTING STATEMENT FOR FINAL RULE 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. 33-9308,¹ the Securities and Exchange Commission (the “Commission”) adopted final 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. Rule 239 under the Securities Act exempts 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 exemption is 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 Rule 239 will 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” (new collection of information).

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

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The purpose of the information collection in Rule 239 is 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.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

Rule 239 information will not be filed with the Commission.

¹ Exemptions for Security-Based Swaps Issued by Certain Clearing Agencies, Release No. 33-9308 (Mar. 30, 2012), 77 FR 20536 (Apr. 5, 2012).

4. DUPLICATION OF INFORMATION

We are not aware of any rules that will conflict with or substantially duplicate Rule 239.

5. REDUCING THE BURDEN ON SMALL ENTITIES

Under Section 605(b) of the Regulatory Flexibility Act, the Commission certified that, when adopted, Rule 239 would not have a significant economic impact on a substantial number of small entities. This certification, including the Commission's basis for the certification, was included in Part VIII of the proposing release for Rule 239.² The Commission solicited comments on the potential impact of proposed Rule 239 on small entities, but received none. Rule 239 as adopted is the same as proposed Rule 239 without change. Accordingly, there have been no changes to Rule 239 that would alter the basis upon which the certification was made.

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 requested comment on the new "collection of information" and the associated paperwork burdens in the proposing release for Rule 239,³ but the Commission did not receive any comments on this.

9. PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. CONFIDENTIALITY

The Rule 239 information will not be filed with the Commission; it will 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 in the security-based swap transaction. The collection of information will not be kept confidential.

² See Exemptions for Security-Based Swaps Issued By Certain Clearing Agencies, Release No. 33-9222 (Jun. 9, 2011), 76 FR 34920 (Jun. 15, 2011).

³ Id.

11. SENSITIVE QUESTIONS

Not applicable.

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 new collection of information requirements. The disclosure provisions of Rule 239 apply to registered or exempt clearing agencies relying on the exemption from the registration requirements of the Securities Act. The disclosure provisions of Rule 239 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.

Currently, three entities are deemed registered as clearing agencies under Exchange Act Section 17A to provide central clearing services for credit default swaps, a class of security-based swaps.⁴ Based on the fact that there are currently three clearing agencies authorized to clear security-based swaps and that there could conceivably be a few more in the foreseeable future,⁵ we estimate that three to six clearing agencies may plan to centrally clear security-based swaps and seek to rely on Rule 239, and therefore, would be subject to the collection of information.

We 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 making available certain information in accordance with 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 Rule 239 information requirement is to inform investors about whether there is publicly available information about the issuer of the referenced security or the referenced issuer.⁶ We believe that a clearing agency likely already would be collecting the type of information required by rule 239.⁷

⁴ These clearing agencies are ICE Trust U.S. LLC, Chicago Mercantile Exchange Inc., and ICE Clear Europe, Ltd.

⁵ 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.

⁶ We proposed rules in 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”) 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 of Rule 239.

⁷ As noted above, three clearing agencies are deemed registered as clearing agencies for purposes of clearing security-based swaps and are able to engage as central counterparties in clearing eligible

We 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.⁸ We estimate that each registered or exempt clearing agency will provide or update the information 20 times per year.⁹ Therefore, we 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 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.

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

Not applicable.

17. DISPLAY OF OMB APPROVAL DATE

credit default swaps, in part, pursuant to a temporary exemptive order relating to Sections 5 and 6 of the Exchange Act. See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of “Security” to Encompass Security-Based Swaps, and Request for Comment, Release No. 34-64795 (Jul. 1, 2011). The temporary exemptive order contains conditions relating to, among other things, available information about the eligible credit default swaps and the underlying reference entity of such eligible credit default swaps. Id.

⁸ 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 Rule 19b-4(o)(5). We believe that the information that would be required to rely on the exemptions we are adopting 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 exemptions in an agreement or on the clearing agency’s website would be less than the burden to post a security-based swap submission.

⁹ In the Mandatory Clearing Proposing Release, we estimated that each clearing agency will submit 20 security-based swap submissions annually. Each submission will relate to a security-based swap, or group, category, type or class of security-based swap that the clearing agency plans to accept for clearing. 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 exemptions.

Not applicable. The Rule 239 information will not be filed with the Commission.

**18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION
ACT SUBMISSIONS**

Not applicable.

B. STATISTICAL METHODS

Not applicable.