

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67289; File No. SR-ICC-2012-04)

June 28, 2012

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change to Add Rules Related to the Clearing of Emerging Markets Sovereign Index CDS

I. Introduction

On April 3, 2012, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change (SR-ICC-2012-04) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the Federal Register on April 16, 2012.³ On May 29, 2012, the Commission extended the time within which to take action of the proposed rule change to July 13, 2012.⁴ The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

This rule change will amend Chapter 26 of ICC’s rules to add Section 26C to provide for the clearance of the CDX Emerging Markets CDS contracts (“CDX.EM Contracts”), which reference an emerging market sovereign index. ICC will list the five year tenor of Series 14, 15, 16 and 17 of the CDX.EM Contracts.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 66777 (April 10, 2012), 77 FR 22623 (April 16, 2012).

⁴ Securities Exchange Act Release No. 67070 (May 29, 2012), 77 FR 33013 (June 4, 2012).

CDX.EM Contracts have similar terms to the CDX North American Index CDS contracts (“CDX.NA Contracts”) currently cleared by ICC and governed by Section 26A of the ICC rules. Accordingly, the proposed rules found in Section 26C largely mirror the ICC rules for CDX.NA Contracts in Section 26A, with certain modifications that reflect the underlying reference entities (sovereign reference entities instead of corporate reference entities) and differences in terms and market conventions between CDX.EM Contracts and CDX.NA Contracts. The CDX.EM Contracts reference the CDX.EM index, the current series of which consists of 15 emerging market sovereign entities: Argentina, Venezuela, Brazil, Malaysia, Colombia, Hungary, Indonesia, Panama, Peru, South Africa, the Philippines, Turkey, Russia, Ukraine, and Mexico. CDX.EM Contracts, consistent with market convention and widely used standard terms documentation, can be triggered by credit events for failure to pay, restructuring, and repudiation/moratorium (by contrast to the credit events of failure to pay and bankruptcy applicable to the CDX.NA Contracts). CDX.EM Contracts will only be denominated in U.S. dollars.

ICC Rule 26C-102 (Definitions) sets forth the definition ICC uses for its CDX.EM Contract rules. An “Eligible CDX.EM Untranching Index” is defined as “each particular series and version of a CDX.EM index or sub-index, as published by the CDX.EM Untranching Publisher, included from time to time in the List of Eligible CDX.EM Untranching Indexes,” which is a list maintained, updated, and published from time to time by the ICC board of directors or its designee, containing certain specified information with respect to each index. “CDX.EM Untranching Terms Supplement” refers to the market standard form of documentation used for credit default swaps on the CDX.EM index, which is incorporated by reference into the

contract specifications in Section 26C. The remaining definitions are substantially the same as the definitions found in Section 26A of the ICC rules, other than certain conforming changes.

Rules 26C-309 (Acceptance of CDX.EM Untranching Contract), 26C-315 (Terms of the Cleared CDX.EM Untranching Contract), and 26C-316 (Updating Index Version of Fungible Contracts After a Credit Event or a Succession Event; Updating Relevant Untranching Standard Terms Supplement) reflect or incorporate the basic contract specifications for CDX.EM Contracts and are substantially the same as under Section 26A of the ICC rulebook for CDX.NA Contracts. In addition to various non-substantive conforming changes, proposed Rule 26C-317 (Terms of CDX.EM Untranching Contracts) differs from the corresponding Rule 26A-317 to reflect the fact that restructuring and repudiation/moratorium are credit events for the CDX.EM Contract.

In addition, a conforming change is being made to the definition of “Restructuring CDS Contract” in Section 26E (CDS Restructuring Rules) to address components of CDX.EM Contracts that become subject to a restructuring credit event. The treatment of such restructuring credit events for CDX.EM Contracts will thus be as set forth in existing Section 26E of the ICC rules.

III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁵ After careful review, the Commission finds that the proposed rule change is

⁵ 15 U.S.C. 78s(b)(2)(B). For example, Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which the

consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Given the particular characteristics of the products proposed to be cleared, the Commission carefully considered ICC's ability to clear the CDX.EM Contracts in a manner that assures the safeguarding of securities and funds which are in the custody and control of ICC or for which ICC is responsible. After considering the representations made by ICC regarding its belief that it would clear CDX.EM Contracts in a manner that assures the safeguarding of securities and funds, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act⁶ and the rules and regulations thereunder.

clearing agency is responsible. 15 U.S.C. 78q-1(b)(3)(F). Though the CDX.EM Contracts are not themselves securities, the safety and soundness of the product directly impacts ICC's ability to safeguard securities and funds in its custody or control or for which it is responsible.

⁶ 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-ICC-2012-04) be, and hereby is, approved.⁸

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill
Deputy Secretary

⁷ 15 U.S.C. 78s(b)(2).

⁸ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30-3(a)(12).