

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 230, 240 and 260

[Release Nos. 33-9158; 34-63348; 39-2472; File No. S7-02-09]

RIN 3235-AK26

**EXTENSION OF TEMPORARY EXEMPTIONS FOR ELIGIBLE CREDIT
DEFAULT SWAPS TO FACILITATE OPERATION OF CENTRAL
COUNTERPARTIES TO CLEAR AND SETTLE CREDIT DEFAULT
SWAPS**

AGENCY: Securities and Exchange Commission.

ACTION: Final temporary rules; extension.

SUMMARY: We are extending the expiration dates in our temporary rules that provide exemptions under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 for certain credit default swaps in order to continue facilitating the operation of one or more central counterparties for those credit default swaps until the implementation of the clearing provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under the amendments, the expiration dates of the temporary rules are extended to July 16, 2011.

DATES: Effective Date: This rule is effective [insert date of publication in the Federal Register], and the expiration dates for the temporary rules and amendments published January 22, 2009 (74 FR 3967) and extended in a release published on September 17, 2009 (74 FR 47719) are extended from November 30, 2010 to July 16, 2011.

FOR FURTHER INFORMATION CONTACT: Amy M. Starr, Senior Special Counsel, or Michael J. Reedich, Special Counsel, Office of Chief Counsel, Division of Corporation Finance, at (202) 551-3500, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to the following rules: temporary Rule 239T and Rule 146 under the Securities Act of 1933 (“Securities Act”),¹ temporary Rule 12a-10T and Rule 12h-1(h)T under the Securities Exchange Act of 1934 (“Exchange Act”),² and temporary Rule 4d-11T under the Trust Indenture Act of 1939 (“TIA”).³

I. BACKGROUND

In January 2009, we adopted interim final temporary Rule 239T and a temporary amendment to Rule 146 under the Securities Act, interim final temporary Rules 12a-10T and 12h-1(h)T under the Exchange Act, and interim final temporary Rule 4d-11T under the TIA (collectively, the “Temporary Rules”), and in September 2009, we extended the expiration date of these rules from September 25, 2009 to November 30, 2010. We adopted these rules in connection with temporary exemptive orders⁴ we issued to clearing agencies acting as central counterparties (“CCP”), which exempted the CCPs from the requirement to register as clearing agencies under Section 17A of the Exchange Act⁵ solely to perform the functions of a clearing agency for certain credit default swap (“CDS”) transactions.⁶ The exemptive orders also

¹ 15 U.S.C. 77a et. seq.

² 15 U.S.C. 78a et. seq.

³ 15 U.S.C. 77aaa et. seq.

⁴ See generally Securities Exchange Act Release Nos. 60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009) and 61973 (Apr. 23, 2010), 75 FR 22656 (Apr. 29, 2010) (temporary exemptions in connection with CDS clearing by ICE Clear Europe Limited); Securities Exchange Act Release Nos. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) and 61975 (Apr. 23, 2010), 75 FR 22641 (Apr. 29, 2010) (temporary exemptions in connection with CDS clearing by Eurex Clearing AG); Securities Exchange Act Release Nos. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009), 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009), and 61803 (Mar. 30, 2010), 75 FR 17181 (Apr. 5, 2010) (temporary exemptions in connection with CDS clearing by Chicago Mercantile Exchange Inc.); Securities Exchange Act Release Nos. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009), 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009), and 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.

⁵ 15 U.S.C. 78q-1.

⁶ See Exchange Act Release No. 59246 (Jan. 14, 2009).

exempted certain eligible contract participants⁷ and others from certain Exchange Act requirements with respect to certain CDS.⁸ Also at that time, we temporarily exempted any exchange that effects transactions in certain CDS from the requirements under Sections 5 and 6 of the Exchange Act⁹ to register as a national securities exchange, and any broker or dealer that effects transactions on an exchange in certain CDS from the requirements of Section 5 of the Exchange Act.

We adopted the Temporary Rules and the CCP exemptive orders because we believed and continue to believe that the existence of CCPs for CDS would be important in helping to reduce counterparty risks inherent in the CDS market. Today, CDS agreements generally are negotiated and entered into bilaterally, but eligible trades may be submitted to the CCP for novation, which results in the CCP becoming the buyer to the original seller and the seller to the original buyer.¹⁰ The operation of a well-regulated CCP can significantly reduce counterparty risks by preventing the failure of a single-market participant from having a disproportionate effect on the overall market, since bilateral counterparty risk is eliminated as the creditworthiness of the original counterparties is replaced by the creditworthiness of the CCP.

At the time of the adoption of the Temporary Rules and the CCP exemptive orders, the OTC market for CDS was a source of concern to us and other financial regulators due to the systemic risk posed by CDS, the possible inability of parties to meet their obligations as counterparties under the CDS, and the potential resulting adverse effects on other markets and

⁷ See 7 U.S.C. 1a(12).

⁸ See generally the actions noted in footnote 4, supra.

⁹ 15 U.S.C. 78e and 78f.

¹⁰ “Novation” is a “process through which the original obligation between a buyer and seller is discharged through the substitution of the CCP as seller to buyer and buyer to seller, creating two new contracts.” Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissioners, Recommendations for Central Counterparties (November 2004) at 66.

the financial system.¹¹ In response, in January 2009, we took action to help foster the prompt development of CCPs for CDS, including granting conditional exemptions from certain provisions of the federal securities laws.

In September 2009, we extended the expiration date of the Temporary Rules to November 30, 2010 because, among other reasons, a number of legislative initiatives relating to the regulation of derivatives, including CDS, had been introduced by members of Congress and recommended by the United States Department of the Treasury (“Treasury”), and Congress had not yet taken definitive action with respect to any of the legislative initiatives or the Treasury proposals.¹²

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) became law.¹³ The Dodd-Frank Act is intended to address regulatory gaps in the existing regulatory structure for the over-the-counter (“OTC”) derivatives markets by providing the Commission and the Commodity Futures Trading Commission (“CFTC”) the authority to regulate OTC derivatives. The primary goals of Title VII of the Dodd-Frank Act, among others, are to increase the transparency, efficiency and fairness of the OTC derivatives markets, improve investor protection and to reduce the potential for counterparty and systemic

¹¹ In addition to the potential systemic risks that CDS pose to financial stability, we were concerned about other potential risks in this market, including operational risks, risks relating to manipulation and fraud, and regulatory arbitrage risks.

¹² See, e.g., Derivatives Trading Integrity Act of 2009 (S. 272) (introduced by Senator Tom Harkin in January 2009); The Derivatives Markets Transparency and Accountability Act (H.R. 977) (introduced by Representative Collin Peterson in February 2009); Authorizing the Regulation of Swaps Act (S. 961) (introduced by Senator Carl Levin and Senator Susan Collins in May 2009); Treasury’s framework for regulatory reform (released in June 2009); Derivative Trading Accountability and Disclosure Act (H.R. 3300) (introduced by Representative Michael McMahon in July 2009); Description of Principles for OTC Derivatives Legislation (announced by Representative Barney Frank and Representative Collin Peterson in July 2009); Senator Charles Schumer’s announcement regarding a potential bill establishing central trade repositories for OTC derivatives markets (August 2009); and Over-the-Counter Derivatives Markets Act of 2009 (prepared by Treasury and sent to Congress in August 2009).

¹³ The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. No. 111-203, H.R. 4173).

risk.¹⁴ To this end, Title VII of the Dodd-Frank Act imposes a comprehensive regime for the regulation of “swaps” and “security-based swaps” (as those terms are defined in the Dodd-Frank Act), including the clearing, exchange trading, and reporting of transactions in security-based swaps.¹⁵ Certain CDS are security-based swaps as defined under the Dodd-Frank Act.

The Dodd-Frank Act amends the Exchange Act to require, among other things, that transactions in security-based swaps be cleared through a clearing agency that is registered with the Commission or that is exempt from registration if the transactions are of a type that the Commission determines must be cleared, unless an exemption from mandatory clearing applies.¹⁶ Title VII of the Dodd-Frank Act also provides that a derivatives clearing organization that is registered with the CFTC and cleared swaps pursuant to an exemption from registration as a clearing agency prior the date of enactment of the Dodd-Frank Act, is deemed registered as a clearing agency for the purposes of clearing security-based swaps (“Deemed Registered Provision”).¹⁷ The Deemed Registered Provision, along with other general provisions under Title VII of the Dodd-Frank Act, become effective on July 16, 2011.¹⁸

¹⁴ See e.g., S.Rep. No. 111-176 at 2 (2010).

¹⁵ Section 761(a)(6) of the Dodd-Frank Act defines a “security-based swap” as any agreement, contract, or transaction that is a swap based on a narrow-based security index, a single security or loan, including any interest therein or on the value thereof; or the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

¹⁶ See Section 763(a) of the Dodd-Frank Act, added as Section 3C(a)(1) of the Exchange Act, 15 U.S.C. 78a.

¹⁷ See Section 763(b) of the Dodd-Frank Act, added as Section 17A(l) of the Exchange Act, 15 U.S.C. 78q-1.

¹⁸ Section 774 of the Dodd-Frank Act states, “[u]nless otherwise provided, the provisions of this subtitle shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle.”

The Dodd-Frank Act also directs us to adopt regulations regarding, among other things, clearing agencies for, and the clearing of, security-based swaps, which include CDS. Under the Dodd-Frank Act, all security-based swaps, including certain types of CDS, are defined as securities under the Securities Act and the Exchange Act. In separate rulemakings, we will be proposing rules to implement the clearing provisions of the Dodd-Frank Act, among others.¹⁹ As part of our review of the application of the Securities Act, the Exchange Act and the TIA to security-based swaps and the implications for the clearing and exchange trading provisions of the Dodd-Frank Act and our rules implementing them, we will be evaluating the necessity and appropriateness of exemptions from the registration requirements of the Securities Act and Exchange Act and the indenture qualification provisions of the TIA for security-based swaps that will be cleared by clearing agencies. Pending the effective date of the relevant provisions of the Dodd-Frank Act, however, the Temporary Rules are needed to enable the CCPs to continue to clear eligible CDS in accordance with the exemptive orders we have provided. The Temporary Rules are an interim measure that will be supplanted by the comprehensive regulatory regime required by the Dodd-Frank Act.

At the time of adoption of the Temporary Rules in January 2009, we requested comment on various aspects of the Temporary Rules. We received a total of 15 letters, only two of which commented specifically on the Temporary Rules.²⁰ Although those two letters generally supported allowing CCPs to clear and settle CDS transactions in accordance with the terms of the Temporary Rules, neither of the commenters specifically addressed the duration of the

¹⁹ Under the Dodd-Frank Act, we are responsible for proposing and adopting numerous rulemakings relating to Title VII and many other rules implementing other provisions of such Act.

²⁰ The public comments we received are available for website viewing and printing at the Commission's Public Reference Room at 100 F St. N.E., Washington, DC 20549 in File No. S7-02-09. They are also available online at <http://www.sec.gov/comments/s7-02-09/s70209.shtml>.

Temporary Rules and temporary amendments.²¹ The other commenters raised issues not directly related to this rulemaking. No comments have been submitted to us regarding the Temporary Rules since that time.

The Temporary Rules expire on November 30, 2010. As we discuss above, until the effective date of the clearing provisions of Title VII of the Dodd-Frank Act and our rules implementing them, it is important that the CCPs continue to be able to clear eligible CDS without concern that the Temporary Rules are unavailable. As a result, we have determined that it is necessary and appropriate to extend the expiration date to July 16, 2011.²²

We are only extending the expiration date of the Temporary Rules; we are not making any other changes to the Temporary Rules. The Temporary Rules were modeled on other exemptions we have provided in the past to facilitate trading in certain securities.²³ They are limited in scope; in general, they facilitate the operation of the CCPs under the exemptive orders.²⁴

II. AMENDMENT OF EXPIRATION DATE OF THE TEMPORARY RULES

In January 2009, we adopted the Temporary Rules on a temporary basis until September 25, 2009. We subsequently extended the expiration date to November 30, 2010 to allow CCPs that were clearing and settling CDS transactions in the U.S. and in Europe to continue to clear and settle CDS transactions. The Temporary Rules also enable other CCPs that

²¹ See letters from the Yale Law School Capital Markets and Financial Instruments Clinic (March 23, 2009) and from IDX Capital (March 23, 2009).

²² See Section III, *infra*, for a discussion of why the extension of time is necessary.

²³ See, e.g., Securities Act Section 3(a)(14) [15 U.S.C. 77c(a)(14)], Securities Act Rule 238 [17 CFR 230.238]; Exchange Act Section 12(a) [15 U.S.C. 78l(a)], and Exchange Act Rule 12h-1(d) and (e) [17 CFR 240.12h-1(d) and (e)] (providing similar exemptions from provisions of the federal securities laws for standardized options and securities futures products).

²⁴ For a fuller discussion of the exemptive rules, see Exchange Act Release 59246 (Jan. 14, 2009).

obtain exemptive orders to start clearing and settling CDS transactions in the manner contemplated by the exemptive orders.

Since the adoption of the Temporary Rules and issuance of the exemptive orders, ICE Trust U.S. LLC (“ICE Trust”), and ICE Clear Europe, Ltd. (“ICE Clear Europe”) have been actively engaged as CCPs in clearing CDS transactions in reliance on our exemptions. As of October 25, 2010, ICE Trust has cleared 157,691 CDS transactions with a notional value of \$7.8 trillion. As of October 25, 2010, ICE Clear Europe has cleared 175,102 CDS transactions with a notional value of €3.8 trillion. We believe that the clearing of CDS transactions by ICE Trust and ICE Clear Europe has contributed and we anticipate will continue to contribute to increased transparency and the reduction of systemic risk in the CDS market.

We also granted exemptive orders to three other CCPs to clear CDS that have functioned as CCPs in clearing CDS transactions in accordance with our exemptions.²⁵ Two of these CCPs, The Chicago Mercantile Exchange and Eurex Clearing AG have advised our staff that they intend to continue to work with participants in the CDS market to promote their CCP services.

The extension of the Temporary Rules and the exemptive orders will terminate at the time that the clearing provisions and rules implementing of Title VII of the Dodd-Frank Act become effective. The extension of such Temporary Rules is designed to the foster continued development and operation of CCPs for eligible CDS, which we believe is in the public interest. Once the Dodd-Frank Act provisions become effective, a new permanent and comprehensive regulatory regime for all security-based swaps will be implemented and the Temporary Rules

²⁵ See Exchange Act Release Nos. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) and 61975 (Apr. 23, 2010), 75 FR 22641 (Apr. 29, 2010) (temporary exemptions for Eurex Clearing AG); Exchange Act Release Nos. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009), 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009), and 61803 (Mar. 30, 2010), 75 FR 17181 (Apr. 5, 2010) (temporary exemptions for Chicago Mercantile Exchange Inc.); and Exchange Act Release No. 59164 (Dec. 24, 2008) 74 FR 139 (Jan. 2, 2009) (temporary exemption for LIFFE A&M and LCH.Clearnet Ltd.). LIFFE A&M and LCH.Clearnet Ltd., allowed their temporary exemption to expire.

affecting solely eligible CDS will no longer be necessary or appropriate. Therefore, due to the limited time the Temporary Rules will be needed, and our ongoing efforts to implement the provisions of the Dodd-Frank Act, we are extending the Temporary Rules until July 16, 2011.

III. CERTAIN ADMINISTRATIVE LAW MATTERS

Section 553(b) of the Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a proposed rule making in the Federal Register. This requirement does not apply, however, if the agency “for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” For the reasons we discuss throughout this release, we believe that there is good cause to extend these rules until July 16, 2011 without further notice or opportunity for comment.

We sought comment on the Temporary Rules and as noted above, we received little comment when they were originally promulgated. In addition to the specific comments that we sought and received in connection with the Temporary Rules in January 2009, we have sought public input on implementing the provisions of the Dodd-Frank Act, which requires extensive public notice and comment rulemaking that will supplant and subsume the exemptive rules we have crafted as a temporary measure.²⁶ Further, we will seek public comment in connection with the proposed rulemaking to implement the specific provisions of the Dodd-Frank Act relating to the treatment of security-based swaps under the Securities Act and the Exchange Act. Commenters will have full opportunity to provide their views on this new comprehensive regulatory regime.

²⁶ See Public Comments on SEC Regulatory Initiatives Under the Dodd-Frank Act, located at <http://www.sec.gov/spotlight/regreformcomments.shtml>. None of these comments addressed the Temporary Rules.

Absent the extension of the Temporary Rules, such Temporary Rules would expire at the end of November 2010, prior to the effective date of the provisions of Title VII of the Dodd-Frank Act. The rules have been in place since January 2009, and CCPs have relied on them in clearing eligible CDS. Extending the expiration date of the Temporary Rules would not affect the substantive provisions of those rules. Without further extending the expiration date of the Temporary Rules to the time of effectiveness of the provisions of Title VII of the Dodd-Frank Act, CCPs would not be able to continue to clear eligible CDS in accordance with the exemptive orders they have received from us. Extending the expiration date of the Temporary Rules will allow exempt CCPs to continue to clear eligible CDS until the provisions of the Dodd-Frank Act, including the rules promulgated under such Act, become effective. This will occur by the July 2011 expiration of the Temporary Rules. Therefore, we believe there is good cause to extend the Temporary Rules until July 16, 2011 and find that notice and solicitation of comment on the extension to be impracticable, unnecessary, or contrary to the public interest.²⁷

The APA also generally requires that an agency publish an adopted rule in the Federal Register 30 days before it becomes effective.²⁸ However, this requirement does not apply if the agency finds good cause not to delay the effective date.²⁹ For reasons similar to those explained above, the Commission finds good cause not to delay the effective date.

IV. PAPERWORK REDUCTION ACT

²⁷ This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendments to become effective notwithstanding the requirements of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are “impractical, unnecessary or contrary to the public interest,” a rule shall take effect at such time as the federal agency promulgating the rule determines.”).

²⁸ 5 U.S.C. 553(d).

²⁹ 5 U.S.C. 553(d)(3).

The Temporary Rules do not impose any new “collections of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”),³⁰ nor do they create any new filing, reporting, recordkeeping, or disclosure reporting requirements for a CCP that is or will be issuing or clearing eligible CDS. Accordingly, we did not submit the Temporary Rules to the Office of Management and Budget for review in accordance with the PRA when we adopted them in January 2009.³¹ We requested comment on whether our conclusion that there are no collections of information is correct, and we did not receive any comment. The extension of the expiration dates does not change our analysis.

V. COST-BENEFIT ANALYSIS

In January 2009, we adopted the Temporary Rules, which exempt eligible CDS that are or will be issued or cleared by a CCP and offered and sold only to eligible contract participants from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provision, as well as from the registration requirements under Section 12 of the Exchange Act and from the provisions of the TIA. In September 2009, we adopted amendments to such rules to extend their expiration date to November 30, 2010. The Temporary Rules were intended to facilitate the operation of one or more CCPs to act as a clearing agency in the CDS market to reduce some of the risks in the CDS market. Today, we are adopting amendments to such rules to extend their expiration date to July 16, 2011.

Since the adoption of the Temporary Rules and issuance of the exemptive orders, ICE Trust and ICE Clear Europe have been actively engaged as a CCP in clearing CDS transactions in accordance with our exemptions.

³⁰ 44 U.S.C. 3501 *et seq.*

³¹ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

On July 21, 2010, the Dodd-Frank Act was enacted. Among other things, the Dodd-Frank Act amends the Exchange Act to require that transactions in security-based swaps be cleared through a clearing agency that is either registered with the Commission or exempt from registration if the transactions are of a type that the Commission determines must be cleared, unless an exemption from mandatory clearing applies. As noted above, the Dodd-Frank Act directs us to regulate, among other things, clearing agencies for, and the clearing of, security-based swaps, which include certain CDS, and in separate rulemakings we will be proposing rules to implement the clearing provisions of the Dodd-Frank Act, among others. Extending the expiration dates of the Temporary Rules until July 16, 2011 will allow us to propose those rules, which will be subject to notice and comment. Pending the effective date of the clearing provisions of the Dodd-Frank Act, however, the Temporary Rules are needed to enable the CCPs to continue to clear eligible CDS in accordance with the exemptive orders we have provided.

A. Benefits

The Temporary Rules and the CCP exemptive orders facilitate the operation of CCPs in the CDS market. We believe that extending the Temporary Rules and the CCP exemptive orders will continue to facilitate the operation of CCPs³² and the use by eligible contract participants of CDS CCPs while enabling us to provide some oversight of the non-excluded CDS market.³³ We believe that the operation of two CCPs in accordance with our exemptions has increased transparency,³⁴ increased available information about exposures to particular reference entities or

³² See Karen Brettell, Banks to submit 95 pct of eligible CDS for clearing (Sep. 1, 2009), available at <http://www.reuters.com/article/euRegulatoryNews/idUSN0150814420090901?pageNumber=1&virtualBrandChannel=10522>.

³³ See e.g., Exchange Act Release No. 59527, supra Note 10 (our exemptions require that the CCPs provide us with, among other things, access to conduct on-site inspections of facilities, records and personnel).

³⁴ See Testimony of Mark Lenczowski, supra Note 12.

reference securities,³⁵ and reduced risks to participants in the market for CCP-cleared CDS.³⁶

Not extending the termination date could cause significant disruptions in this market. Therefore, we believe that extending the termination date of the Temporary Rules provides important benefits to CDS market participants.

B. Costs

Absent the exemptions provided by the Temporary Rules, a CCP may have to file a registration statement covering the offer and sale of the eligible CDS, may have to satisfy the applicable provisions of the TIA, and may have to register the class of eligible CDS that it has issued or cleared under the Exchange Act, which would provide investors with the disclosures and other protections of these requirements, including civil remedies in addition to antifraud remedies.

We recognize that a consequence of extending the exemptions will be the unavailability of certain remedies under the Securities Act and the Exchange Act and certain protections under the TIA. While an investor would be able to pursue an antifraud action in connection with the purchase and sale of eligible CDS under Exchange Act Section 10(b),³⁷ it would not be able to pursue civil remedies under Sections 11 or 12 of the Securities Act.³⁸ We could still pursue an antifraud action in the offer and sale of eligible CDS issued or cleared by a CCP.³⁹ We believe that the incremental costs from the extension of the expiration date of the Temporary Rules will be minimal because the amendments are merely an extension of such Temporary Rules and such

³⁵ See e.g., Exchange Act Release No. 59527, supra Note 26.

³⁶ See IntercontinentalExchange, supra Note 13.

³⁷ 15 U.S.C. 78j(b).

³⁸ 15 U.S.C. 77k and 77l.

³⁹ See 15 U.S.C. 77q and 15 U.S.C. 78j(b).

extension will not affect the information and remedies available to investors as a result of the Temporary Rules.

VI. CONSIDERATION OF IMPACT ON THE ECONOMY, BURDEN ON COMPETITION AND PROMOTION OF EFFICIENCY, COMPETITION AND CAPITAL FORMATION

Section 23(a)(2) of the Exchange Act⁴⁰ requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b)⁴¹ of the Securities Act and Section 3(f)⁴² of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.

The Temporary Rules we are extending today exempt eligible CDS issued or cleared by a CCP from all provisions of the Securities Act, other than the Section 17(a) antifraud provision, as well as from the registration requirements under Section 12 of the Exchange Act and the provisions of the TIA. Because these exemptions are available to any CCP offering and selling eligible CDS, we do not believe that extending the exemptions imposes a burden on competition. We also anticipate that extending the ability to settle CDS through CCPs will continue to improve the transparency of the CDS market and provide greater assurance to participants as to the capacity of the eligible CDS counterparty to perform its obligations under the eligible CDS. ICE Trust, for example, makes available on its website information about open interests, or net

⁴⁰ 15 U.S.C. 78w(a)(2).

⁴¹ 15 U.S.C. 77b(b).

⁴² 15 U.S.C. 78c(f).

exposure, volume and pricing of CDS transactions. We believe that increased transparency in the CDS market could help to decrease further market turmoil and thereby facilitate the capital formation process.

VII. REGULATORY FLEXIBILITY ACT CERTIFICATION

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that extending Temporary Rules will not have a significant economic impact on a substantial number of small entities. The Temporary Rules exempt eligible CDS that are or will be issued or cleared by a CCP. None of the entities that are eligible to meet the requirements of the exemption from registration under Section 17A is a small entity.

VIII. STATUTORY AUTHORITY AND TEXT OF THE RULES AND AMENDMENTS

The amendments described in this release are being adopted under the authority set forth in Sections 18, 19 and 28 of the Securities Act; Sections 12(h), 23(a) and 36 of the Exchange Act; and Section 304(d) of the TIA.

List of Subjects

17 CFR Parts 230, 240 and 260

Reporting and recordkeeping requirements, Securities.

TEXT OF THE RULES AND AMENDMENTS

Accordingly, we are temporarily amending 17 CFR parts 230, 240, and 260 as follows and the expiration date for the temporary rules published January 22, 2009 (74 FR 3967), and extended to November 30, 2010, is further extended from November 30, 2010, to July 16, 2011.

PART 230 - GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

§§ 230.146 and 230.239T [Amended]

2. In §230.146(c)T, in the last sentence, remove the words “November 30, 2010” and add, in their place, the words “July 16, 2011”.

3. In §230.239T(e), remove the words “November 30, 2010” and add, in their place, the words “July 16, 2011”.

**PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE
ACT OF 1934**

4. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3) unless otherwise noted.

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§§ 240.12a-10T and 240.12h-1 [Amended]

5. In §240.12a-10T(b), remove the words “November 30, 2010” and add, in their place, the words “July 16, 2011”.

6. In §240.12h-1(h)T, in the last sentence, remove the words “November 30, 2010” and add, in their place, the words “July 16, 2011”.

**PART 260 - GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF
1939**

7. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78ll(d), 80b-3, 80b-4, and 80b-11.

§ 260.4d-11T [Amended]

8. In §260.4d-11T, in the last sentence, remove the words “November 30, 2010” and add, in their place, the words “July 16, 2011”.

By the Commission.

Elizabeth M. Murphy
Secretary

November 19, 2010