

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65588; File No. SR-ICC-2011-01)

October 18, 2011

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

I. Introduction

On August 30, 2011, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-ICC-2011-01 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 September 9, 2011.³ 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 Sections 26D and 26E to provide for the clearance of Emerging Markets Standard Sovereign CDS Contracts (“SES Contracts”). ICC will clear SES Contracts on four sovereign reference entities: the Federative Republic of Brazil, the United Mexican States, the Bolivian Republic of Venezuela, and the Argentine Republic. If ICC determines to list additional SES Contracts, it will seek approval from the Commission for such contracts (or for a class of product including such contracts) by a subsequent filing with the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-65259 (September 2, 2011), 76 FR 55984 (September 9, 2011). In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements are incorporated into the discussion of the proposed rule change in Section II below.

SES Contracts have similar terms to the North American Corporate CDS Contracts (“Corporate Single Name CDS Contracts”) currently cleared by ICC and governed by Section 26B of the ICC rules. Accordingly, proposed rules in Section 26D largely mirror the ICC rules for Corporate Single Name CDS Contracts in Section 26B, with certain modifications that reflect differences in terms and market conventions between SES Contracts and Corporate Single Name CDS Contracts. In the event that a clearing participant is domiciled in a country that is the reference entity for an SES Contract, ICC will not permit the clearing participant to clear such SES Contract.

Rule 26D-102 (Definitions) sets forth the definitions used for SES Contracts. An “Eligible SES Reference Entity” is defined as “each particular Reference Entity included from time to time in the List of Eligible Reference Entities,” which is a list maintained, updated and published from time to time by ICC containing certain specified information with respect to each reference entity.⁴ The Eligible SES Reference Entities will at present be limited to the four Latin American sovereigns listed above. Certain substantive changes have also been made to the definition of “List of Eligible SES Reference Entities” (as compared to the corresponding definition in Section 26B), due to the fact that certain terms and elections for Corporate Single Name CDS Contracts are not applicable to SES Contracts. These include (i) the need for an election as to whether “Restructuring” is an eligible “Credit Event” (it is by market convention applicable to all SES Contracts, whereas it is generally not applicable to Corporate Single Name CDS Contracts) and (ii) the applicability of certain International Swaps and Derivatives Association (“ISDA”) supplements that may apply to Corporate Single Name CDS Contracts but

⁴ Similar to the index credit default swap (“CDS”) contracts and Corporate Single Name CDS Contracts that ICC currently clears, ICC will accept for clearing sovereign CDS contracts denominated in U.S. Dollars only.

do not apply to SES Contracts, including the 2005 Monoline Supplement, the ISDA Additional Provisions for a Secured Deliverable Obligation Characteristic, and the ISDA Additional Provisions for Reference Entities with Delivery Restrictions. According to ICC, SES Contracts will only be denominated in U.S. Dollars. The remaining definitions are substantially the same as the definitions found in ICC Section 26B, other than with respect to certain conforming changes.

Rules 26D-203 (Restriction on Activity), 26D-206 (Notices Required of Participants with respect to SES Contracts), 26D-303 (SES Contract Adjustments), 26D-309 (Acceptance of SES Contracts by ICE Trust), 26D-315 (Terms of the Cleared SES Contract), 26D-316 (Relevant Physical Settlement Matrix Updates), 26D-502 (Specified Actions), and 26D-616 (Contract Modification) reflect or incorporate the basic contract specifications for SES Contracts and are substantially the same as the corresponding provisions applicable to Corporate Single Name CDS Contracts in Section 26B of ICC rules, other than with respect to certain conforming changes. For the avoidance of doubt, ICC will not accept a trade for clearance and settlement if at the time of submission or acceptance of the trade or at the time of novation the CDS Participant submitting the trade is domiciled in the country of the Eligible SES Reference Entity for such SES Contract.

In addition to various non-substantive conforming changes, the proposed rules differ from the existing rules for Corporate Single Name CDS Contracts in that the contract terms in Rule 26D-315 incorporate the relevant published ISDA physical settlement matrix terms for Standard Latin American Sovereign transactions, rather than Standard North American Corporate transactions, and, as noted in the preceding paragraph, to account for certain elections

and supplements used for Corporate Single Name CDS Contracts that are not applicable to SES Contracts.

New Section 26E (CDS Restructuring Rules) provides rules applicable to cleared Contracts in the event of a restructuring credit event. Corporate Single Name CDS Contracts currently cleared by ICC are generally not subject to these restructuring rules. Unlike other credit events, following a restructuring credit event, parties to a cleared SES Contract must determine whether or not to trigger their credit protection. To facilitate this election while permitting ICC to maintain a matched book of cleared Contracts, Section 26E provides that protection buyers and protection sellers under a Restructuring CDS Contract (defined as a CDS Contract where a restructuring credit event has occurred) will be matched into pairs, each referred to as a “Matched Restructuring Pair,” by ICC for purposes of sending and receiving such triggering notices. Rule 26E-102 sets forth the definitions used throughout Section 26E in connection with a restructuring credit event.

The procedures for creation of Matched Restructuring Pairs are set forth in Rule 26E-103 (Allocation of Matched Restructuring Pairs). Following the announcement that a restructuring credit event has occurred with respect to an SES Contract, ICC will match each protection seller in that contract with one or more protection buyers in that contract, such that the notional amount of the contract of each protection seller is fully allocated to one or more protection buyers. In order to be matched, positions in an SES Contract must be of the same type (i.e., having the same reference entity, tenor, reference obligation, fixed rate, and relevant physical settlement matrix).

The mechanics associated with the delivery and receipt of notices by clearing participants under Matched Restructuring Pairs are set forth in Rule 26E-104 (Matched Restructuring Pairs; Designations and Notices). This rule provides that once ICC has created the Matched

Restructuring Pairs, ICC will be deemed to have designated the matched CDS buyer and matched CDS seller as its designee to receive and deliver credit event notices in relation to the Restructuring CDS Contract. The rule also contains a mechanism for notifying ICC of disputes with respect to such notices.

Finally, Rule 26E-105 (Separation of Matched Restructuring Pairs) addresses situations where an announcement of a restructuring credit event is followed by a determination that such event did not in fact occur.⁵ The rule provides that if ICC has not matched buyers with sellers to form a Matched Restructuring Pair, then ICC will not do so. If ICC has matched sellers with buyers to form a Matched Restructuring Pair, but settlement (either auction settlement or fallback physical settlement) has not occurred, then ICC will reverse the matching. If fallback physical settlement is applicable, ICC will not reverse any matching to the extent that the matched CDS buyer or matched CDS seller has given notice to ICC that the parties have settled the relevant matched CDS contract within one Business Day following delivery of the matching reversal notice. If a CDS contract is reversed, ICC will recalculate the margin accordingly.

ICC believes that clearance of SES Contracts will facilitate the prompt and accurate settlement of security-based swaps and contribute to the safeguarding of securities and funds associated with security-based swap transactions.⁶

⁵ Determination of a credit event and a subsequent determination that a credit event did not occur are made by the ISDA relevant credit derivatives determinations committee (“DC”), or, in the event a request has been submitted to the relevant DC and ISDA has publicly announced that the relevant DC has resolved not to determine the answer, by the appropriate ICE Clear Credit Regional CDS Committee.

⁶ ICC has performed a variety of empirical analyses related to clearing of SES Contracts on sovereign reference entities, including back tests and stress tests using actual clearing participant portfolios (with respect to the stress tests) combined with hypothetical positions in sovereign CDS contracts based on data retrieved from the Depository Trust Clearing Corporation’s Trade Information Warehouse and through interaction with ICC’s Trade Advisory Committee.

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.⁷ For example, Section 17A(b)(3)(F) of the Act⁸ requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.

If approved, the proposed rule change would for the first time permit a Commission-registered clearing agency to clear sovereign CDS contracts, and ICC has informed the Commission that it intends to introduce clearing of SES Contracts on four sovereign reference entities (the Federative Republic of Brazil, the United Mexican States, the Bolivian Republic of Venezuela, and the Argentine Republic) products promptly after obtaining Commission approval. By bringing additional products into clearing, the Commission believes the proposed rule change is consistent with the requirements of the Act in that it would contribute to the national system for the prompt and accurate clearance and settlement of securities transactions.

Given the particular characteristics of the products proposed to be cleared, the Commission also carefully considered ICC's ability to clear SES Contracts in a safe and sound manner. After considering the representations made by ICC regarding its belief that the clearance of SES Contracts will contribute to the safeguarding of securities and funds associated

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

with security-based swap transactions based on its analysis,⁹ the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, including ICC's obligation to ensure that its rules be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.

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 Act¹⁰ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-ICC-2011-01) be, and hereby is, approved.¹²

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

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Deputy Secretary

⁹ Supra note 6.

¹⁰ 15 U.S.C. 78q-1.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 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).

¹³ 17 CFR 200.30-3(a)(12).