

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97293; File No. SR-ICC-2023-005)

April 12, 2023

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 30, 2023, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Rulebook (the “Rules”) to provide for the clearance of an additional Standard Emerging Market Sovereign CDS contract (the “EM Contract”).

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to adopt rules that will provide the basis for ICC to clear an additional credit default swap contract. ICC proposes to make such change effective following Commission approval of the proposed rule change. ICC believes the addition of this contract will benefit the market for credit default swaps by providing market participants the benefits of clearing, including reduction in counterparty risk and safeguarding of margin assets pursuant to clearing house rules. Clearing of the additional EM Contract will not require any changes to ICC’s Risk Management Framework or other policies and procedures constituting rules within the meaning of the Securities Exchange Act of 1934 (“Act”).

ICC proposes amending Subchapter 26D of its Rules to provide for the clearance of the additional EM Contract, specifically the Dominican Republic. This additional EM Contract has terms consistent with the other SES EM Contracts (Standard Emerging Market Sovereign (“SES”) Single Name) approved for clearing at ICC and governed by Subchapter 26D of the Rules. Minor revisions to Subchapter 26D are made to provide for clearing the additional EM Contract. Specifically, in Rule 26D-102 (Definitions), “Eligible SES Reference Entities” is modified to include the Dominican Republic in the list of specific Eligible SES Reference Entities to be cleared by ICC.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act³ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions; to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and to comply with the provisions of the Act and the rules and regulations thereunder. The additional EM Contract proposed for clearing is similar to the SES contracts currently cleared by ICC, and will be cleared pursuant to ICC's existing clearing arrangements and related financial safeguards, protections and risk management procedures. Clearing of the additional EM Contract will allow market participants an increased ability to manage risk and ensure the safeguarding of margin assets pursuant to clearing house rules. ICC believes that acceptance of the new EM Contract, on the terms and conditions set out in the Rules, is consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.⁴

³ 15 U.S.C. 78q-1(b)(3)(F).

⁴ Id.

Clearing of the additional EM Contract will also satisfy the relevant requirements of Rule 17Ad-22,⁵ as set forth in the following discussion.

Rule 17Ad-22(e)(6)(i)⁶ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market. In terms of financial resources, ICC will apply its existing margin methodology to the new EM Contract, which are similar to the SES contracts currently cleared by ICC. ICC believes that this model will provide sufficient margin requirements to cover its credit exposure to its clearing members from clearing such contracts, consistent with the requirements of Rule 17Ad-22(e)(6)(i).⁷

Rule 17Ad-22(e)(4)(ii)⁸ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the

⁵ 17 CFR 240.17Ad-22.

⁶ 17 CFR 240.17Ad-22(e)(6)(i).

⁷ Id.

⁸ 17 CFR 240.17Ad-22(e)(4)(ii).

two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. ICC believes its Guaranty Fund, under its existing methodology, will, together with the required initial margin, provide sufficient financial resources to support the clearing of the additional EM Contract, consistent with the requirements of Rule 17Ad-22(e)(4)(ii).⁹

Rule 17Ad-22(e)(17)¹⁰ requires, in relevant part, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by (i) identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls; and (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. ICC believes that its existing operational and managerial resources will be sufficient for clearing of the additional EM Contract, consistent with the requirements of Rule 17Ad-22(e)(17),¹¹ as the new contracts are substantially the same from an operational perspective as existing contracts.

Rule 17Ad-22(e)(8), (9) and (10)¹² requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to define the point at which settlement is final to be no later than the end of the

⁹ Id.

¹⁰ 17 CFR 240.17Ad-22(e)(17)(i) and (ii).

¹¹ Id.

¹² 17 CFR 240.17Ad-22(e)(8), (9) and (10).

day on which payment or obligation is due and, where necessary or appropriate, intraday or in real time; conduct its money settlements in central bank money, where available and determined to be practical by the Board, and minimize and manage credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used; and establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries. ICC will use its existing rules, settlement procedures and account structures for the new EM Contract, which are similar to the SES contracts currently cleared by ICC, consistent with the requirements of Rule 17Ad-22(e)(8), (9) and (10)¹³ as to the finality and accuracy of its daily settlement process and addressing the risks associated with physical deliveries.

Rule 17Ad-22(e)(2)(i) and (v)¹⁴ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. ICC determined to accept the additional EM Contract for clearing in accordance with its governance process, which included review of the contract and related risk management considerations by the ICC Risk Committee and approval by its Board. These governance arrangements continue to be clear and transparent, such that information relating to the assignment of responsibilities

¹³ Id.

¹⁴ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

and the requisite involvement of the ICC Board and committees is clearly detailed in the ICC Rules and policies and procedures, consistent with the requirements of Rule 17Ad-22(e)(2)(i) and (v).¹⁵

Rule 17Ad-22(e)(13)¹⁶ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring its participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto. ICC will apply its existing default management policies and procedures for the additional EM Contract. ICC believes that these procedures allow for it to take timely action to contain losses and liquidity demands and to continue meeting its obligations in the event of clearing member insolvencies or defaults in respect of the additional single name, in accordance with Rule 17Ad-22(e)(13).¹⁷

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed amendments will have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the purpose of the proposed rule change is to adopt rules

¹⁵ Id.

¹⁶ 17 CFR 240.17Ad-22(e)(13).

¹⁷ Id.

that will provide the basis for ICC to clear additional credit default swap contract. The additional EM Contract will be available to all ICC participants for clearing. The clearing of the additional EM Contract by ICC does not preclude the offering of the additional EM Contract for clearing by other market participants. Accordingly, ICC does not believe that clearance of the additional EM Contract will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICC-2023-005 on the subject line.

Paper Comments:

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-ICC-2023-005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit’s website at <https://www.theice.com/clear-credit/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information

from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-ICC-2023-005 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).