(''17d–2 Agreement'').[19] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NOS's compliance with certain Exchange rules.[20] Pursuant to the Regulatory Contract, however, the Exchange retains ultimate responsibility for enforcing its rules with respect to NOS.

- Second, FINRA will monitor NOS for compliance with the Exchange's trading rules, and will collect and maintain certain related information.[21]
- Third, FINRA will provide a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange or FINRA is aware) that identify NOS as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NOS as a participant that has potentially violated Commission or Exchange rules.
- Fourth, the Exchange is amending NASDAQ Rule 2160(c) to require NASDAQ OMX, as the holding company owning both the Exchange and NOS, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound options order routing to the Exchange.[22]
- Fifth, the Exchange proposes that the routing of options orders from NOS to the Exchange, in NOS's capacity as a facility of BX, be authorized for a pilot period of one year.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[23] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NOS, in its capacity as a facility of BX, to route options orders inbound to the Exchange on a pilot basis, subject to the limitations and conditions described above.[24]

The Commission believes that these limitations and conditions enumerated above will mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that a non-affiliated SRO's oversight of NOS,[25] combined with a non-affiliated SRO's monitoring of NOS's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NOS. The Commission also believes that the Exchange's proposed amendments to NASDAQ Rule 2160(c) are designed to ensure that NOS cannot use any information advantage it may have because of its affiliation with the Exchange. Furthermore, the Commission believes that the Exchange's proposal to allow NOS to route options orders inbound to the Exchange from BX, on a pilot basis, will provide the Exchange and the Commission an opportunity to assess the impact of any conflicts of interest of allowing an affiliated member of the Exchange to route orders inbound to the Exchange and whether such affiliation provides an unfair competitive advantage.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NASDAQ–2012–061) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16374 Filed 7–3–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67289; File No. SR–ICC–2012–04]

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

June 28, 2012.

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

[19] 17 CFR 240.17d–2.

[20] NOS is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[21] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in its capacity as a facility of BX routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* Notice, *supra* note 4, at 31058 n.14.

[22] The Commission notes that prior to this proposed rule change, NASDAQ Rule 2160(c) only applied with respect to the Exchange's equity order routing facility, NASDAQ Execution Services LLC. As a result of this proposed rule change, NASDAQ Rule 2160(c) will be applicable to NOS.

[23] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving NASDAQ's proposal to adopt NASDAQ Rule 2140, restricting affiliations between NASDAQ and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62 and SR–NYSE–2008–60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in Direct Edge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.).

[24] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* BX Options Approval, *supra* note 11, at II.D.2.

[25] This oversight will be accomplished through the 17d–2 Agreement between FINRA and the Exchange and the Regulatory Contract. *See* Notice, *supra* note 4, at 31058 n.12 and accompanying text.

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

[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).

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.

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 Untranched Index'' is defined as ''each particular series and version of a CDX.EM index or sub-index, as published by the CDX.EM Untranched Publisher, included from time to time in the List of Eligible CDX.EM Untranched 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 Untranched 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 Untranched Contract), 26C–315 (Terms of the Cleared CDX.EM Untranched Contract), and 26C–316 (Updating Index Version of Fungible Contracts After a Credit Event or a Succession Event; Updating Relevant Untranched 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 Untranched 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 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 Act[6] and the rules and regulations thereunder.

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.

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[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 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.

[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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67321; File No. SR–NYSEMKT–2012–16]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule To Increase the Monthly Fee per Amex Trading Permit for Order Flow Providers and Clearing Members and Make a Conforming Change to the Current Text in the Fee Schedule

June 29, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 by the self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.