

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67983; File No. SR-ICC-2012-17)

October 4, 2012

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Revise Rules Related to Legal Segregation with Operational Commingling

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 September 21, 2012, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I and II 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 and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

ICC submits proposed amendments to its Rules to implement the enhanced margin segregation model for cleared swaps that the Commodity Futures Trading Commission (“CFTC”) adopted in Part 22 of the CFTC regulations (generally referred to as “legal segregation with operational commingling” or “LSOC”). CFTC rules require ICC (like other derivatives clearing organizations) to implement LSOC by November 8, 2012. As result of the LSOC requirements, ICC principally proposes to (i) introduce new procedures for allocating initial margin to the positions carried for each customer on a customer-by-customer basis, (ii) introduce new procedures for calling for, holding and returning customer margin in light of the requirement to allocate initial margin on a customer-by-customer basis, and (iii) change the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

default “waterfall” to limit ICC’s ability to use customer margin in the event that a clearing member defaults, consistent with the requirements of LSOC. The LSOC requirements are intended to mitigate the risk that one customer of a clearing member would suffer a loss because of a default by another clearing member. ICC will also be removing existing provisions of the Rules that addressed the holding of excess margin and will not be necessary in ICC’s initial implementation of LSOC.

ICC proposes to amend Parts 3, 4, 8, 20 and 20A of the ICC Rules, as well as related definitions, to incorporate Part 22 of the CFTC Regulations. The other proposed changes in the ICC Rules reflect conforming changes and drafting clarifications and do not affect the substance of the ICC Rules or forms of cleared products. All capitalized terms not defined herein are defined in the ICC Rules.

II. Self-Regulatory Organization’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 changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item III below. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.³

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As noted above, the principal purpose of the proposed rule amendments is intended to update the particular characteristics of the Rules applicable to the segregation of customer

³ The Commission has modified the text of the summaries prepared by ICC to reflect information communicated during phone calls with Michelle Weiler, Assistant General Counsel, on October 2 and October 3, 2012.

margin. Specifically, the proposed rule changes affect Parts 3, 4, 8, 20 and 20A of the ICC Rules, and related definitions, by providing, in summary, that initial margin allocated to a particular customer's positions may not be used to cover losses arising from another customer's positions. Each of these changes is described in detail as follows.

In Part 1 of the ICC Rules, the definitions of "custodial asset policies," "custodial client omnibus margin account," "eligible custodial assets," "excess margin," "net client omnibus margin account," "net margin requirement," and "Participant excess margin" have been deleted to reflect the LSOC model and particularly the elimination of provisions relating to holding excess margin at ICC. New definitions for "client omnibus margin account" and "non-Participant party portfolio" have been added to accommodate the LSOC model, including the customer-by-customer tracking of initial margin and positions.

Existing Rule 304(b), which pertains to offsets, has been revised to conform to LSOC requirements that ICC calculate and collect Client-Related Initial Margin on a gross basis as opposed to a net basis. Existing Rule 307 has been revised so that the Statement of Open Positions now lists the Net House Margin Requirement and the Net Client-Related Mark-To-Market Margin Requirement, and Existing Rule 308 has been modified so that the Statement of Initial Margin states the Net House Margin Requirement and the Non-Participant Party Portfolio Margin Requirement for each Non-Participant Party Portfolio.

Existing Rule 401(a) has been revised so that it only applies to house margin. ICC has adopted a new Rule 401(b) that governs for client-related margin, which is the margin posted by a Participant in respect of Client-Related Positions. To comply with LSOC as it relates to "initial margin," under new Rule 401(b)(i), ICC will calculate the initial margin requirement separately for each Non-Participant Party Portfolio and compare it to the value of initial margin provided by

the Participant and allocated by ICC under CFTC Rules to that portfolio. In each margin cycle, ICC will call for additional initial margin for each Non-Participant Party Portfolio for which there is a shortfall. ICC will separately make available for return to the Participant any excess initial margin held with respect to a Non-Participant Party Portfolio.

For “mark-to-market margin” under new Rule 401(b)(ii), ICC will continue to calculate a net amount for all Client-Related Positions in all Non-Participant Party Portfolios and compare it to the value of the mark-to-market margin held by ICC or the value of the mark-to-market margin held or deemed held by the Participant. For each margin cycle, ICC will make a net call or payment of mark-to-market margin, as appropriate.

Under the proposed revised Rule 402(h), ICC has incorporated the new CFTC Rule 22.15, which limits ICC’s use of the Initial Margin posted in respect of Client-Related Positions. Revisions to Rule 406 eliminate various provisions that are now covered by CFTC regulations and are no longer necessary with the implementation of the LSOC framework. Further, under the proposed new Rule 406(l), ICC states that it will not accept the deposit of Margin from a Participant in respect of Client-Related Positions in excess of the amount required by ICC.

ICC proposes to revise Rule 20-605(c)(i)(A) in order to modify the default “waterfall” for application of resources in the Closing-out Process for Client-Related Positions upon a Participant default to reflect new CFTC Rule 22.15. The principal change to the rule is in subclause (C), which provides that ICC is only entitled to use Initial Margin allocated to a particular Non-Participant Party Portfolio to cover losses from that portfolio. Initial Margin for Client-Related Positions could not otherwise be applied by ICC as part of the default waterfall. Rule 20-605(c)(i)(A) and (B) also contain various non-substantive drafting improvements and clarifications as compared to the existing Rule. Revisions to Rule 20-605(d) address ICC’s

ability to allocate margin to a particular Non-Participant Party Portfolio for purposes of the default waterfall. ICC has also made conforming changes to Chapter 8 of the Rules, which addresses the use of the guaranty fund in the default waterfall.

The proposed changes to Part 20A of the ICC Rules, which address transfer of positions, are also intended to conform to the changes in the default waterfall.

Finally, in addition to rule changes designed to address Part 22 of the CFTC Regulations, existing Rule 405 has been deleted because it is no longer applicable.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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. 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-2012-17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICC-2012-17. 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 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICC and on ICC's website at https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_092112.pdf.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICC-2012-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act⁴ 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. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act, and the rules and regulations thereunder applicable to ICC.⁵ Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, which requires, among other things, that the rules of a registered clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest.⁶

In its filing, ICC requested that the Commission approve this proposed rule change on an accelerated basis for good cause shown. ICC believes there is good cause for accelerated approval because the rule change is required to be in compliance with Part 22 of the CFTC Regulations, which will become effective on November 8, 2012.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁷ for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register because, as a derivatives clearing organization registered with the

⁴ 15 U.S.C. 78s(b).

⁵ 15 U.S.C. 78q-1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 15 U.S.C. 78s(b)(2).

CFTC, ICC must amend certain of its rules to comply with CFTC's Part 22 Regulations that will become effective on November 8, 2012.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-ICC-2012-17) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).