

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68481; File No. SR-ICC-2012-23)

December 19, 2012

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change to Add Rules Related to the Clearing of iTraxx Europe Index CDS

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 6, 2012, 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. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to adopt new rules that will provide the basis for ICC to clear additional credit default swap contracts. Specifically, ICC is proposing to amend Chapters 8, 20 and 26 and Schedule 401 and Schedule 502 of its rules as well as make corresponding changes to the applicable ICC Policies and Procedures to provide for the clearance of iTraxx Europe Index CDS (“iTraxx Contracts”).

ICC proposes to amend Chapter 8 of its rules to provide for an additional Guaranty Fund Contribution by those Clearing Participants that present Specific Wrong Way Risk (i.e., the risk that arises from the fact that iTraxx Contracts include, in part, the names of certain Clearing Participants or Clearing Participant affiliates). In a default scenario, if the defaulting Clearing Participant has funded a Specific Wrong Way Risk Contribution, the Specific Wrong Way Risk

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Contributions of all contributing Clearing Participants would be used immediately following the defaulting Clearing Participant's funds to cure deficits related to the default.

ICC proposes to amend Chapter 20 of its rules to remove definitions that are included in Chapter 26E of the rules as well as to include the Specific WWR Guaranty Fund Contribution, as appropriate, as a portion of Clearing Participant funds.

ICC proposes to amend Section 26E of its rules to include certain additional provisions relevant to the treatment of restructuring credit events under iTraxx and standard single-name CDS Contracts referencing European corporate reference entities ("European SN Contracts").

ICC proposes to add Section 26F to provide for the clearance of the iTraxx Contracts, which reference the iTraxx Europe corporate index. As discussed in more detail in Item II.A below, new Section 26F of the ICC rules provides for the definitions and certain specific contract terms for cleared iTraxx Contracts.

ICC will update Schedule 401 of its Rules (Eligible Collateral & Thresholds), as applicable, with respect to Initial Margin and Guaranty Fund liquidity requirements for Non-Client and Client-Related positions for both US Dollar and Euro denominated products.

ICC will also update Schedule 502 of its Rules (Cleared Products List) to incorporate the additional cleared products. Upon Commission approval, ICC will list the following European Indices: Markit iTraxx Europe Main Series 18 with a 5-year maturity, maturing on December 20, 2017; Markit iTraxx Europe Main Series 18 with a 10-year maturity, maturing on December 20, 2022; Markit iTraxx Europe Main Series 17 with a 5-year maturity, maturing on June 20, 2017; Markit iTraxx Europe Main Series 17 with a 10-year maturity, maturing on June 20, 2022; Markit iTraxx Europe Main Series 16 with a 5-year maturity, maturing on December 20, 2016; Markit iTraxx Europe Main Series 16 with a 10-year maturity, maturing on December 20, 2021;

Markit iTraxx Europe Main Series 15 with a 5-year maturity, maturing on June 20, 2016; Markit iTraxx Europe Main Series 15 with a 10-year maturity, maturing on June 20, 2021; Markit iTraxx Europe Main Series 14 with a 5-year maturity, maturing on December 20, 2015; Markit iTraxx Europe Main Series 14 with a 10-year maturity, maturing on December 20, 2020; Markit iTraxx Europe Main Series 13 with a 5-year maturity, maturing on June, 20, 2015; Markit iTraxx Europe Main Series 13 with a 10-year maturity, maturing on June, 20, 2020; Markit iTraxx Europe Main Series 12 with a 5-year maturity, maturing on December 20, 2014; Markit iTraxx Europe Main Series 12 with a 10-year maturity, maturing on December 20, 2019; Markit iTraxx Europe Main Series 11 with a 5-year maturity, maturing on June 20, 2014; Markit iTraxx Europe Main Series 11 with a 10-year maturity, maturing on June 20, 2019; Markit iTraxx Europe Main Series 10 with a 5-year maturity, maturing on December 20, 2013; Markit iTraxx Europe Main Series 10 with a 10-year maturity, maturing on December 20, 2018; Markit iTraxx Europe Main Series 9 with a 5-year maturity, maturing on June 20, 2013; Markit iTraxx Europe Main Series 9 with a 10-year maturity, maturing on June 20, 2018; Markit iTraxx Europe Main Series 8 with a 5-year maturity, maturing on December 20, 2012; Markit iTraxx Europe Main Series 8 with a 10-year maturity, maturing on December 20, 2017; Markit iTraxx Europe Main Series 7 with a 10-year maturity, maturing June 20, 2017; Markit iTraxx Crossover Series 18 with a 5-year maturity, maturing on December 20, 2017; Markit iTraxx Crossover Series 17 with a 5-year maturity, maturing on June 20, 2017; Markit iTraxx Crossover Series 16 with a 5-year maturity, maturing on December 20, 2016; Markit iTraxx Crossover Series 15 with a 5-year maturity, maturing on June 20, 2016; Markit iTraxx Crossover Series 14 with a 5-year maturity, maturing on December 20, 2015; Markit iTraxx Crossover Series 13 with a 5-year maturity, maturing on June, 20, 2015; Markit iTraxx Crossover Series 12 with a 5-year maturity, maturing on

December 20, 2014; Markit iTraxx Crossover Series 11 with a 5-year maturity, maturing on June 20, 2014; Markit iTraxx Crossover Series 10 with a 5-year maturity, maturing on December 20, 2013; Markit iTraxx Crossover Series 9 with a 5-year maturity, maturing on June 20, 2013; Markit iTraxx HiVol Series 18 with a 5-year maturity, maturing on December 20, 2017; Markit iTraxx HiVol Series 17 with a 5-year maturity, maturing on June 20, 2017; Markit iTraxx HiVol Series 16 with a 5-year maturity, maturing on December 20, 2016; Markit iTraxx HiVol Series 15 with a 5-year maturity, maturing on June 20, 2016; Markit iTraxx HiVol Series 14 with a 5-year maturity, maturing on December 20, 2015; Markit iTraxx HiVol Series 13 with a 5-year maturity, maturing on June, 20, 2015; Markit iTraxx HiVol Series 12 with a 5-year maturity, maturing on December 20, 2014; Markit iTraxx HiVol Series 11 with a 5-year maturity, maturing on June 20, 2014; Markit iTraxx HiVol Series 10 with a 5-year maturity, maturing on December 20, 2013; Markit iTraxx HiVol Series 9 with a 5-year maturity, maturing on June 20, 2013; and Markit iTraxx HiVol Series 8 with a 5-year maturity, maturing on December 20, 2012.

ICC also updated its Policies and Procedures to provide for the clearance of iTraxx Contracts, specifically the ICC Treasury Operations Policies & Procedures, ICC Risk Management Framework and ICC End-of-Day (“EOD”) Price Discovery Policies and Procedures.

Consistent with the changes to Schedule 401 of the ICC Rules, the ICC Treasury Operations Policies & Procedures have been updated to include Initial Margin and Guaranty Fund liquidity requirements for Non-Client and Client-Related positions for both US Dollar and Euro denominated products. In order to accommodate the return of funds during London banking hours, the ICC Treasury Operations Policies & Procedures have been updated to require requests for Euro withdrawals to be submitted by 9:00 AM Eastern.

The ICC Risk Management Framework has been updated to account for Euro denominated portfolios. Specifically, updates have been made to the Guaranty Fund, Initial Margin and Mark-to-Market Methodologies to address: Wrong Way Risk, Foreign Exchange Risk, Liquidity Risk, Time Zone Risk, and Operational Risk. Additionally, the Portfolio Approach was updated to include appropriate portfolio benefits between North American CDS Indices and iTraxx Contracts.

The ICC EOD Price Discovery Policies and Procedures has been updated to provide that ICC will use ICE Clear Europe's EOD prices for iTraxx Contracts and rely on the ICE Clear Europe Firm Trade process to ensure the accuracy of price submissions. ICC will extend the risk time-horizon for iTraxx Contracts to account for the half day difference, on average, between the EOD price discovery process timings. The extended risk horizon accounts for the fact that European markets close earlier and new financial information may be reflected only in the North American instrument prices and not reflected in the iTraxx Contracts, in general.

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 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.<sup>3</sup>

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<sup>3</sup> The Commission has modified the text of the summaries prepared by ICE Clear Credit.

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

ICC has identified iTraxx Contracts as products that have become increasingly important for market participants to manage risk and express views with respect to European corporate credit risk. ICC's clearance of these Contracts will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions. In addition, ICC notes that the Commodity Futures Trading Commission has determined that iTraxx Europe CDS contracts would be subject to mandatory clearing under Section 2(h) of the Commodity Exchange Act.

iTraxx Contracts have similar terms to the CDX North American Index CDS contracts ("CDX.NA Contracts") and CDX Emerging Market Index ("CDX.EM Contracts") currently cleared by ICC and governed by Sections 26A and 26C of the ICC rules. Accordingly, the proposed rules found in Section 26F largely mirror the ICC rules for those Contracts, with certain modifications that reflect the underlying reference entities (European corporate reference entities instead of North American corporate or Latin American sovereign entities) and differences in terms and market conventions. The iTraxx Contracts reference the iTraxx Europe index, the current series of which consists of 125 European corporate reference entities. iTraxx Contracts, consistent with market convention and widely used standard terms documentation, can be triggered by credit events for failure to pay, bankruptcy and restructuring. iTraxx Contracts will be denominated in Euro.

Rule 26F-102 (Definitions) sets forth the definitions used for the iTraxx Contract Rules. An "Eligible iTraxx Europe Untranching Index" is defined as "each particular series and version of an iTraxx Europe index or sub-index, as published by the iTraxx Untranching Publisher, included from time to time in the List of Eligible iTraxx Untranching Indexes," which is a list

maintained, updated and published from time to time by the ICC Board of Managers or its designee, containing certain specified information with respect to each index. “iTraxx Europe Untranching Terms Supplement” refers to the market standard form of documentation used for credit default swaps on the iTraxx Europe index, which is incorporated by reference into the contract specifications in Chapter 26F. The remaining definitions are substantially the same as the definitions found in ICC Section 26A and Section 26C, other than certain conforming changes.

Rules 26F-309 (Acceptance of iTraxx Europe Untranching Contracts by ICE Clear Credit), 26F-315 (Terms of the Cleared iTraxx Europe Untranching Contract), and 26F-316 (Updating Index Version of Fungible Contracts After a Credit Event or a Succession Event; Updating Relevant Untranching Standard Terms Supplement) reflect or incorporate the basic contract specifications for iTraxx Contracts and are substantially the same as under ICC Section 26A for CDX.NA Contracts and ICC Section 26C for CDX.EM Contracts. In addition to various non-substantive conforming changes, proposed Rule 26F-317 (Terms of iTraxx Europe Untranching Contracts) differs from the corresponding Rule 26A-317 to reflect the fact that restructuring is a credit event for the iTraxx Contract.<sup>4</sup>

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<sup>4</sup> The provisions dealing with the “spin-out” of a single name CDS following a restructuring credit event for a component of the iTraxx Europe index are part of the iTraxx Europe Untranching Standard Terms Supplement (Nov. 2009 edition), which is incorporated into the contract specifications for cleared iTraxx Europe contracts through proposed ICC Rule 26F-315(c). Specifically, Section 7.3(b) of the Supplement addresses the removal of the restructured reference entity from the index and continuation of that component as a separate contract. (Proposed ICC Rule 26F-317(h) clarifies the treatment of the reference obligation for that separate cleared contract.) This is part of the basic standard terms of the iTraxx Europe contract and operates the same way in both the cleared and uncleared contexts (much like other aspects of the market standard terms supplements and/or ISDA Credit Derivatives Definitions on which other cleared and uncleared CDS trade).

In addition, ICC proposes to make conforming changes in Section 26E of the Rules (the CDS Restructuring Rules), principally to address the particular restructuring terms that apply to iTraxx Contracts and European SN Contracts. Specifically, ICC proposes to modify the notice delivery procedures in Rule 26E-104 to include “notices to exercise movement option” under the Mod Mod R terms. In addition, the definition of “Triggered Restructuring CDS Contract” has been modified to reflect that under Mod Mod R terms a CDS contract may be triggered in part following a restructuring credit event.

Section 17A(b)(3)(F) of the Act<sup>5</sup> 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. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F), because ICC believes that the clearance of iTraxx Contracts will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions.

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.

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<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).



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 the 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](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2012-23 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-2012-23. 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 ICE Clear Credit and on ICE Clear Credit's website at [https://www.theice.com/publicdocs/regulatory\\_filings/ICEClearCredit\\_120512.pdf](https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_120512.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-2012-23 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.<sup>6</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).