

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73007; File No. SR-ICC-2014-11)

September 5, 2014

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 2 Thereto, to Revise Rules to Provide for the 2014 ISDA Definitions

I. Introduction

On July 24, 2014, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-ICC-2014-11 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 August 05, 2014.³ The Commission did not receive comments on the proposed rule change. On September 2, 2014, ICC filed Amendment No. 2 to the proposed rule change to correct a factual inaccuracy in a statement made in its filing.⁴ For the reasons described below, the Commission is approving the proposed rule change.

¹ 15 U.S.C. 78(s)(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-72701 (Jul. 29, 2014); 79 FR 45565 (Aug. 5, 2014) (SR-ICC-2014-11).

⁴ On August 28, 2014, ICC filed Amendment No. 1 to the proposed rule change. ICC withdrew Amendment No. 1 on September 2, 2014. ICC subsequently filed Amendment No. 2 on September 2, 2014. In Amendment No. 2, ICC clarified that CDS contracts on sovereigns cleared at ICC will be Converting Contracts (as discussed herein). ICC stated that its implementation of the 2014 ISDA definitions is intended to be fully consistent with the planned ISDA protocol implementation. ICC noted that, on August 15, 2014, ISDA published a memorandum and FAQ that, in relevant part, explains that based on industry feedback related to the draft protocol, the protocol would be amended to include certain emerging market sovereign single names. Following the protocol amendment, all sovereign single names cleared at ICC will now be included in the protocol. Amendment No. 2 corrects a factual inaccuracy in a statement made in ICC’s filing, and because it does not materially affect the substance of the proposed rule change, the Commission is not publishing it for comment.

II. Description of the Proposed Rule Change

ICC has stated that the principal purpose of the proposed rule change is to amend ICC rules to incorporate references to revised Credit Derivatives Definitions, as published by the International Swaps and Derivatives Association, Inc. (“ISDA”) on February 21, 2014 (the “2014 ISDA Definitions”). ICC has stated that, as described by ISDA, the 2014 ISDA Definitions make a number of changes from the ISDA Credit Derivatives Definitions published previously in 2003 (as amended in 2009, the “2003 ISDA Definitions”) to the standard terms for CDS Contracts, including (i) introduction of new terms applicable to credit events involving financial reference entities and settlement of such credit events, (ii) introduction of new terms applicable to credit events involving sovereign reference entities and settlement of such credit events, (iii) implementation of standard reference obligations applicable to certain reference entities, and (iv) various other improvements and drafting updates that reflect market experience and developments since the 2009 amendments to the 2003 ISDA Definitions. The 2014 ISDA Definitions will become effective on the industry implementation date of September 22, 2014.

ICC has proposed that, consistent with the approach being taken throughout the CDS market, the 2014 ISDA Definitions will be applicable to certain products cleared by ICC beginning on September 22, 2014. In addition, the proposed amendments will provide for the conversion of certain existing contracts (so-called “Converting Contracts”), currently based on the 2003 ISDA Definitions, into contracts based on the 2014 ISDA Definitions. ICC asserts that this approach is consistent with expected industry practice for similar contracts not cleared by ICC, which will be subject to a multilateral amendment “protocol” sponsored by ISDA, and that ICC Participants plan to adhere to the ISDA protocol and would desire ICC to convert certain contracts cleared at ICC into contracts based on the 2014 ISDA Definitions, consistent with the

ISDA protocol. For contracts that are not Converting Contracts, ICC expects to continue to accept for clearing both new transactions referencing the 2014 ISDA Definitions and new transactions referencing the 2003 ISDA Definitions (and such contracts based on different definitions will not be fungible). ICC proposes to publish on its website a list of Converting Contracts, which is expected to be the same as the list of contracts subject to the ISDA protocol. ICC anticipates that most ICC Contracts will be Converting Contracts with certain exceptions including certain financial reference entities.

To this end, ICC has proposed to (i) revise the ICC Clearing Rules (“Rules”) to make proper distinctions between the 2014 ISDA Definitions and the 2003 ISDA Definitions and related documentation and (ii) make conforming changes throughout the ICC Rules to reference provisions from the proper ISDA Definitions. ICC has proposed changes to Chapters 20, 21, 22 and 26 of the ICC Rules. ICC has also submitted revisions to the ICC Restructuring Procedures, which ICC states reflect proper distinctions between the 2003 ISDA Definitions and the 2014 ISDA Definitions.⁵

Finally, ICC has proposed revisions to the Risk Management Framework to reflect appropriate portfolio treatment between CDS Contracts cleared under the 2003 and 2014 ISDA Definitions. The revisions to the ICC Risk Management Framework would introduce a “Risk Sub-Factor” as a specific single name and any unique combination of instrument attributes (e.g., restructuring clause, 2003 or 2014 ISDA Definitions, debt tier, etc.). The union of all Risk Sub-Factors that share the same underlying single name would form a single name Risk Factor. The portfolio treatment at the Risk Sub-Factor level would be provided for in the Risk Management

⁵ A more detailed description of the proposed changes to the ICC Rules, ICC Restructuring Procedures, and Risk Management Framework is set forth in the notice of filing of the proposed rule change. See supra note 3.

Framework, as appropriate. Additionally, the ICC Risk Management Framework would be revised to include long and short positions of Risk Sub-Factors for a single name Risk Factor in the Jump-to-Default requirement. The ICC Risk Management Framework also would be revised to include other cleanup and clarification changes (e.g., to address the difference in risk time horizon between North American and European instruments).

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act⁶ directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act⁷ requires, among other things, that the rules of a clearing agency are 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 the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

The Commission finds that the proposed revisions to the ICC Rules, Restructuring Procedures and Risk Management Framework are consistent with the requirements of Section 17A of the Act⁸ and the rules and regulations thereunder applicable to ICC. The proposed rule change, which is principally designed to incorporate and implement the 2014 ISDA Definitions, will permit clearing of contracts, both new and existing, referencing the new definitions, while distinguishing, where applicable, contracts cleared by ICC between those referencing the 2014

⁶ 15 U.S.C. 78s(b)(2)(C).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 15 U.S.C. 78q-1.

ISDA Definitions and those referencing the 2003 ISDA Definitions for purposes of risk management and clearing operations. Additionally, ICC states that the proposed rule change is necessary to provide the market with the assurances that ICC plans to implement the standard credit derivatives definitions consistent with industry practice, thereby facilitating prompt and accurate clearance and settlement. The Commission therefore believes that the proposed rule change is reasonably designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and 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, consistent with Section 17A(b)(3)(F) of the Act.⁹

⁹ 15 U.S.C. 78q-1(b)(3)(F).

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 (SR-ICC-2014-11) as modified by Amendment No. 2 thereto be, and hereby is, approved.¹²

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

Kevin M. O'Neill
Deputy Secretary

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).