

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97647; File No. SR-ICC-2023-004)

June 5, 2023

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

I. Introduction

On April 3, 2023, ICE Clear Credit LLC (“ICC”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to provide for the clearance of Standard Subordinated European Insurance Corporate Single Name CDS contracts (“STSEIC Contracts”). The Proposed Rule Change was published for comment in the Federal Register on April 21, 2023.³ The Commission has not received any comments on the Proposed Rule Change. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

II. Description of the Proposed Rule Change

A. Background

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts.⁴ Chapter 26 of ICC’s Clearing Rules covers the CDS contracts that ICC clears, with each subchapter of Chapter 26 defining the characteristics and Rules

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 97318 (Apr. 17, 2023), 88 FR 24647 (Apr. 21, 2023) (File No. SR-ICC-2023-004) (“Notice”).

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in ICC’s Clearing Rules.

applicable to the various specific categories of CDS contracts that ICC clears. The purpose of the proposed rule change is to add a new subchapter to Chapter 26 to permit ICC to clear an additional contract type. Specifically, new Subchapter 26S would provide the basis for ICC to clear STSEIC Contracts.

New Subchapter 26S has nine associated Rule provisions, with each described further below. Overall, ICC based new Subchapter 26S on existing Subchapter 26G, which applies to Standard European Corporate Single Name contracts (“STEC Contracts”), because STSEIC Contracts and STEC Contracts have similar terms.

That said, new Subchapter 26S would differ from existing Subchapter 26G as needed to account for differences between the two types of contracts. For example, Subchapter 26S does not include several provisions that relate to Modified Modified Restructuring found in Subchapter 26G. This is the case because the market convention is that Modified Modified Restructuring does not apply to STSEIC Contracts, unlike STEC Contracts cleared under Subchapter 26G.⁵ Additionally, Subchapter 26G includes references to 2003-Type CDS Contracts⁶ as well as 2014-Type CDS⁷ Contracts.⁸ Subchapter 26S references 2014-Type Contracts only and eliminates unnecessary

⁵ Id. at 24648.

⁶ A 2003-Type CDS Contract is a CDS Contract that incorporates the 2003 Credit Derivatives Definitions, as published by the International Swaps and Derivatives Association (“ISDA”).

⁷ A 2014-Type CDS Contract is a CDS Contract incorporating the 2014 ISDA Credit Derivatives Definitions.

⁸ ICE Clear Credit Clearing Rules Subchapter 26G.

references to 2014 Type Contracts because ICC does not anticipate that any STSEIC Contract would incorporate the 2003 ISDA definitions.⁹

The remaining differences are discussed with each of the nine associated rule provisions below.

1. Rule 26S-102 (Definitions)

New Rule 26S-102 would set out the defined terms used in Subchapter 26S. For example, Rule 26S-102 would define an STSEIC Contract as a CDS Contract in respect of any Eligible STSEIC Reference Entity having a combination of characteristics listed as eligible for such Eligible STSEIC Reference Entity in, and permitted by, the List of Eligible STSEIC Reference Entities. Eligible STSEIC Reference Entities would be defined as each particular Reference Entity included in the List of Eligible STSEIC Reference Entities (a list of eligible reference entities that ICE Clear Credit maintains on its website). Similarly, for each of those Eligible STSEIC Reference Entities, ICE Clear Credit would determine which of their obligations (such as bonds) are considered to be Eligible STSEIC Reference Obligations.

This section differs from its counterpart in Subchapter 26G in that it does not have a definition that corresponds to the definition of Eligible STEC Sector in Rule 26G-102. Rule 26G-102 lays out a number of permitted industrial sectors for STEC reference entities in STEC Contracts, such as energy and healthcare.¹⁰ Subchapter 26S does not need a similar definition because there are no further sectors to identify. STSEIC Contracts already apply at a sector level of insurance. Thus, identifying eligible sectors

⁹ Notice, 88 FR at 24648.

¹⁰ ICE Clear Credit Clearing Rule 26G-102.

for STSEIC Contracts is not necessary.¹¹ Additionally, this section is updated to remove references to 2003-Type CDS Contracts, unnecessary references to 2014-Type CDS Contracts, and provisions relating to restructuring as discussed above.

2. Rule 26S-203 (Restriction on Activity)

New Rule 26S-203 would allow ICE Clear Credit to auction off a CDS Participant's open STSEIC Contracts where that CDS Participant, among other things, merges with or becomes an affiliate of an Eligible STSEIC Reference Entity. This provision would be functionally equivalent to the corresponding provision in Subchapter 26G. The purpose of this provision is to prevent ICE Clear Credit's CDS Participants from being parties to STSEIC Contracts where the CDS Participants are, or could become, the reference entity of the contract.

3. Rule 26S-206 (Notices Required of Participants with respect to STSEIC Contracts)

New Rule 26S-206 would require that CDS Participants provide notice to ICE Clear Credit if they or their customer, among other things, merge with or become an affiliate of an Eligible STSEIC Reference Entity. In such a situation, as discussed above, new Rule 26S-203 would allow ICE Clear Credit to auction off a CDS Participant's open STSEIC Contracts. This provision would be functionally equivalent to the corresponding

¹¹ Notice, 88 FR at 24647-48.

provision in Subchapter 26G. Like Rule 26S-203, this provision would help prevent ICE Clear Credit's CDS Participants from becoming reference entities to STSEIC Contracts.

4. Rule 26S-303 (STSEIC Contract Adjustments)

New Rule 26S-303 would explain how ICC would treat certain contracts submitted for clearing that appear to be submitted as STSEIC Contracts, but may be missing certain information or appear to contain certain incorrect information. For example, if ICC accepts a contract for an Eligible STSEIC Reference Entity but the contract specifies a type of transaction other than Standard Subordinated European Insurance Corporate, then ICC will treat the contract as an open position in an STSEIC Contract that is otherwise equivalent, but that specifies Standard Subordinated European Insurance Corporate as the transaction type. Again, this provision is functionally equivalent to the corresponding provision in Subchapter 26G.

5. Rule 26S-309 (Acceptance of STSEIC Contracts by ICE Clear Credit)

New Rule 26S-309 would impose certain additional requirements on CDS Participants when they submit a STSEIC Contract for clearing. ICC Rule 309 describes ICC's general process for accepting trades for clearing,¹² and Rule 26S-309 would prescribe additional provisions specific to STSEIC Contracts. These provisions would be based on the existing provisions for Rule 26G-309, but updated to remove references to 2003-Type Contracts, unnecessary references to 2014-Type Contracts, and provisions relating to restructuring as discussed above.

For example, under Rule 26S-309, if the CDS Participant is or is an Affiliate of the Eligible STSEIC Reference Entity for a STSEIC Contract at the time of the Trade

¹² ICE Clear Credit Clearing Rule 309.

submission or Novation Time, it may not submit such Trade for clearance as a STSEIC Contract and ICC does not have to accept the Trade for clearance. Rule 26S-309 also would require CDS Participants to give ICC notice of certain circumstances as soon as reasonably practicable and would govern the contents of certain ICC notices to CDS Participants notifying them that ICC has accepted a Trade submitted for clearance. Additionally, under this rule ICC would give effect to circumstances giving rise to a Successor and a Succession Date (i.e., in the event of a corporate merger, acquisition, or similar transaction that could require a change in a CDS contract's Reference Entity). Rule 26S-309(e) would explain when ICC would give effect to a Successor and Succession Date, and the actions ICC would take to do so.

6. Rule 26S-315 (Terms of the Cleared STSEIC Contract)

New Rule 26S-315 would explain what the terms of each STSEIC Contract would be. Generally, Rule 26S-315 would incorporate the 2014 Definitions into the STSEIC Contracts but also would define and set certain terms that would be specific to STSEIC contracts. For example, Rule 26S-315(f) would define the Transaction Type as being a Standard Subordinated European Insurance Corporate for the Eligible STSEIC Reference Entity. Rule 26S-315(g) would indicate which terms would be determined according to the particular STSEIC Contract submitted for clearing, subject to Rule 26S-303. For example, the Trade Date is a term that will be determined according to the particular STSEIC Contract submitted for clearing, subject to Rule 26S-303. Rule 26S-315(e) would provide that the Settlement Method for particular STSEIC Contracts will be Auction Settlement and the Fallback Settlement Method will be Physical Settlement in accordance with the CDS Physical Settlement Rules. For the most part, these provisions would be based on the existing provisions for Rule 26G-315, but updated to remove

references to 2003-Type Contracts, unnecessary references to 2014-Type Contracts, and provisions relating to restructuring as discussed above.

The proposed rule change adds one sentence to new Rule 26S-315 that is not present in the corresponding section of existing 26G-315. That sentence, in new Rule 26S-315(f), ensures that the Subordinated European Insurance Terms will apply to each STSEIC Contract. Subordinated European Insurance Terms are part of the market-standard provisions that apply under the 2014 Definitions.¹³ According to the definition for List of Eligible STSEIC Reference Entities in Rule 26S-102, Eligible STSEIC Reference Entities must use the 2014 Definitions in their STSEIC Contracts.

7. Rule 26S-316 (Relevant Physical Settlement Matrix Updates)

New Rule 26S-316 would describe how ICC would handle ISDA updates to the Relevant Physical Settlement Matrix. For example, Rule 26S-316(a) indicates that in certain circumstances when ISDA publishes a newer version of the Credit Derivatives Physical Settlement Matrix (“New Matrix”) than the Relevant Physical Settlement Matrix for any STSEIC Contract, STSEIC Contracts with previous versions of the Matrix (“Superseded Matrix”) shall become STSEIC Contracts referencing the New Matrix as the Relevant Physical Settlement Matrix, and the List of Eligible STSEIC Reference Entities shall be updated accordingly. Any STSEIC Contract referencing a Superseded Matrix and submitted for clearing shall, upon acceptance for clearing, become a STSEIC

¹³ Id. at 24648.

Contract referencing the New Matrix. This provision is functionally equivalent to the corresponding provision in Subchapter 26G.

8. Rule 26S-502 (Specified Actions)

ICC Rule 502 defines certain actions as Specified Actions and prohibits ICC from taking or permitting to be taken any Specified Action without first consulting with the Risk Committee.¹⁴ For example, modification of the ICC Rules, Procedures, or any other governing provisions related to Margin would be a Specified Action.¹⁵ New Rule 26S-502 provides that certain actions are not Specified Actions. For example, adding and/or Modifying Permitted STSEIC Fixed Rates and adding new Eligible STSEIC Reference Entities each would not constitute a Specified Action. This provision is functionally equivalent to the corresponding provision in Subchapter 26G.

9. Rule 26S-616 (Contract Modification)

ICC Rule 616 prohibits ICC from carrying out a Contract Modification without first providing Participants at least ten ICE Business Days' notice prior to the effective date of such Contract Modification. Under ICC Rule 616 a Contract Modification is defined as a Modification that "would, in the determination of ICC, (i) reasonably be expected to have a material effect on the Mark-to-Market Price (as defined in Rule 404) of such Contract or (ii) materially increase the basis risk of such Contract relative to the over-the-counter agreement equivalent to such Contract referred to in Rule 301."¹⁶ New Rule 26S-616 would provide that it will not constitute a Contract Modification if ICC's

¹⁴ ICE Clear Credit Clearing Rule 502.

¹⁵ ICE Clear Credit Clearing Rule 502(f).

¹⁶ ICE Clear Credit Clearing Rule 616(a).

Board or its designee updates the List of Eligible STSEIC Reference Entities (and modifies the terms and conditions of related STSEIC Contracts) to give effect to determinations by the Regional CDS Committee (or applicable Dispute Resolver) or a Credit Derivatives Determinations Committee. Additionally, the determination that “Standard Reference Obligation” will be applicable to an Eligible STSEIC Reference Entity will not constitute a Contract Modification.

Rule 26S-616 would contain two differences from the corresponding provision in Subchapter 26G. First, Rule 26S-616 would not include a provision applicable to 2003-Type Contracts that convert to 2014-Type Contracts. As mentioned above, ICC does not anticipate that any STSEIC Contract would be a 2003-Type Contract, so this provision is not necessary.

Second, Rule 26S-616 would not include a provision that incorporates the NTCE Supplement to the 2014 Definitions.¹⁷ ISDA has issued the NTCE Supplement and previously incorporated it into the 2014 Definitions. Thus, the NTCE Supplement would

¹⁷ The NTCE Supplement is the 2019 Narrowly Tailored Credit Event Supplement to the 2014 ISDA Credit Derivatives Definitions published by ISDA. For more information on this supplement, see *Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Clearing Rules To Reflect the ISDA NTCE Supplement*, Exchange Act Release No. 87971 (Jan. 5, 2020), 85 FR 3724 (Jan. 22, 2020) (SR-ICC-2019-013).

automatically apply to any STSEIC Contracts going forward, and 26S-616 would not need to specifically incorporate it into the terms of the contracts.¹⁸

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.¹⁹ For the reasons given below, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act²⁰ and Rule 17Ad-22(e)(1).²¹

A. Consistency with Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, ICC’s rules, among other things, must 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 the clearing agency or for which it is responsible . . . and, in general, to protect investors and the public interest”²² Based on its review of the record, and for the reasons discussed below, the Commission believes that ICC’s proposed rule change is consistent with Section 17A(b)(3)(F) of the Act because ICC’s clearing of STSEIC

¹⁸ Notice, 88 FR at 24648.

¹⁹ 15 U.S.C. 78s(b)(2)(C).

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

²¹ 17 CFR 240Ad-22(e)(1).

²² 15 U.S.C. 78q-1(b)(3)(F).

Contracts will allow market participants an increased ability to manage risk and the provisions of Subchapter 26S would help ensure that ICC has in place rules to appropriately govern the clearing of STSEIC Contracts and manage the risk related to clearing STSEIC Contracts.

ICC's clearing of STSEIC Contracts will provide market participants an increased ability to manage risk through the contracts. ICC will clear STSEIC Contracts pursuant to its existing clearing arrangements and related financial safeguards, protections and risk management procedures.²³ For example, ICC will apply its existing initial margin methodology to the clearing of STSEIC Contracts.²⁴ The Commission believes these safeguards, protections, and risk management procedures will lower the risk that a party to a STSEIC Contract transaction will default, which, in turn, would promote the prompt and accurate clearance and settlement of STSEIC Contracts and help to ensure the safeguarding of margin assets.

Moreover, combined with ICC's current safeguards, Subchapter 26S promotes the prompt and accurate clearance and settlement of STSEIC Contracts. Subchapter 26S would amend the ICC Clearing Rules to accommodate the clearing of STSEIC Contracts. Among other things, these amendments would provide definitions and contract terms with respect to STSEIC Contracts, which would help ensure that ICC has in place rules to appropriately govern the clearing of STSEIC Contracts. In addition, ICC will clear STSEIC Contracts pursuant to its existing clearing arrangements and related financial safeguards, protections, and risk management procedures. This will allow ICC to

²³ Notice, 88 FR at 24648.

²⁴ Id.

appropriately manage the risk of STSEIC Contracts. Accordingly, the Commission believes that the addition of Subchapter 26S, taken together with ICC's existing safeguards, would promote the prompt and accurate clearance and settlement of STSEIC Contracts.

The Commission believes, therefore, that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.²⁵

B. Consistency with Rule 17Ad-22(e)(1)

Rule 17Ad-22(e)(1) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.²⁶ When it adopted Rule 17Ad-22(e)(1), the Commission noted that, in addressing legal risk, a covered clearing agency should consider whether its rules, policies and procedures, and contracts are clear, understandable, and consistent with relevant laws and regulations.²⁷

The Commission believes that ICC's addition of Subchapter 26S to its clearing rules helps ensure that ICC's rules are clear and understandable with respect to its clearance of STSEIC Contracts. Among other things, Subchapter 26S defines relevant terms, provides provisions relevant to STSEIC Contracts, and clarifies how ICC will handle and process certain potential lifecycle and other events in connection with relevant

²⁵ 15 U.S.C. 78q-1(b)(3)(F).

²⁶ 17 CFR 240.17Ad-22(e)(1).

²⁷ Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70802 (Oct. 13, 2016) (File No. S7-03-14).

STSEIC Contracts, including a CDS Participant's merger or affiliation with an Eligible STSEIC Reference Entity and certain ISDA updates to the Relevant Physical Settlement Matrix. Through its provisions, Subchapter 26S provides a reasonable level of certainty related to, and a clear legal basis for, outcomes related to its clearance of STSEIC Contracts.

The Commission believes, therefore, that the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(1) of the Act.²⁸

²⁸ 17 CFR 240.17Ad-22(e)(1).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act and Rule 17Ad-22(e)(1) thereunder.²⁹

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act that the Proposed Rule Change (SR-ICC-2023-004) be, and hereby is, approved.³⁰

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.³¹

Sherry R. Haywood,
Assistant Secretary.

²⁹ 15 U.S.C. 78q-1(b)(3)(F).

³⁰ In approving the Proposed Rule Change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³¹ 17 CFR 200.30-3(a)(12).