

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99115; File No. SR-ICC-2023-014)

December 7, 2023

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

I. Introduction

On October 25, 2023, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to clear additional credit default swap (“CDS”) contracts. The proposed rule change was published for comment in the Federal Register on November 7, 2023.³ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts. Chapter 26 of ICC’s Rulebook covers the CDS contracts that ICC clears, with each subchapter of Chapter 26 defining the characteristics and additional Rules applicable to the various specific categories of CDS contracts that ICC clears. Among other CDS contracts, ICC currently clears Standard Emerging Market Sovereign Single Name CDS (“SES”) contracts.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts; Exchange Act Release No. 98833 (Nov. 1, 2023), 88 FR 76870 (Nov. 7, 2023) (File No. SR-ICC-2023-014) (“Notice”).

The purpose of the proposed rule change is to amend ICC’s rules to permit ICC to clear additional SES contracts, specifically, SES contracts on the Kingdom of Morocco and the Federal Republic of Nigeria.

To carry out this change, the proposed rule change would amend Subchapter 26D of Chapter 26. In Rule 26D-102 (Definitions), “Eligible SES Reference Entities,” the proposed rule change would add the Kingdom of Morocco and the Federal Republic of Nigeria to the list of specific Eligible SES Reference Entities to be cleared by ICC.

As discussed below, these additional SES contracts have terms consistent with the other SES contracts that ICC is already clearing. Likewise, to clear these additional contracts, ICC will be able to rely on its existing Risk Management Framework and other policies and procedures without making any changes.

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.⁴ For the reasons given below, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁵ and Rule 17Ad-22(e)(1) thereunder.⁶

⁴ 15 U.S.C. 78s(b)(2)(C).

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 17 CFR 240.17Ad-22(e)(1).

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

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.⁷

The proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.⁸ The terms and conditions of the additional SES contracts proposed for clearing are substantially similar to the terms and conditions of the other contracts listed in Subchapter 26D of ICC's Rules, all of which ICC currently clears, with the key difference being the underlying reference obligations. The underlying reference obligations will be issuances by the Kingdom of Morocco and the Federal Republic of Nigeria.

A review of the Notice and ICC's Rules, policies, and procedures shows that ICC would be able to clear the additional SES contracts pursuant to its existing clearing arrangements and related financial safeguards, protections, and risk management procedures. Furthermore, a review of data on volume, open interest, and the number of ICC Clearing Participants ("CPs") that currently trade in the SES contracts, as well as certain model parameters for the additional contracts, show that ICC's rules, policies, and procedures are reasonably designed to price and measure the potential risk presented by the additional SES contracts, collect financial resources in proportion to such risk, and liquidate the additional contracts in the event of a CP default. This should help ensure ICC's ability to maintain the financial resources it needs to provide its critical

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

services and function as a central counterparty, thereby promoting the prompt and accurate settlement of the additional SES contracts and other credit default swap transactions.

Therefore, clearance of the additional SES contracts would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.⁹

⁹ 15 U.S.C. 78q-1(b)(3)(F).

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.¹⁰

The proposed rule change would help provide a well-founded, clear, transparent, and enforceable legal basis for ICC's clearance of SES contracts on the Kingdom of Morocco and the Federal Republic of Nigeria. By amending Rule 26D-102 to add both the Kingdom of Morocco and the Federal Republic of Nigeria to the list of specific Eligible SES Reference Entities to be cleared by ICC, the proposed rule change would help to ensure that ICC can clear SES contracts on those countries pursuant to its existing rules in Subchapter 26D. The revised Subchapter 26D would provide a well-founded, clear, transparent, and enforceable legal basis for ICC to clear these contracts, consistent with the requirements of Rule 17Ad-22(e)(1).¹¹

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, with the requirements of Section 17A(b)(3)(F) of the Act¹² and Rule 17Ad-22(e)(1) thereunder.¹³

¹⁰ 17 CFR 240.17Ad-22(e)(1).

¹¹ 17 CFR 240.17Ad-22(e)(1).

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 17 CFR 240.17Ad-22(e)(1).

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁴ that the proposed rule change (SR-ICC-2023-014), be, and hereby is, approved.¹⁵

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 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).

¹⁶ 17 CFR 200.30-3(a)(12).