

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66766; File No. SR-ICC-2012-05)

April 6, 2012

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change to Membership Qualifications

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 April 3, 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 Terms of Substance of the Proposed Rule Change

The purpose of proposed rule change is to conform the ICC membership qualifications to be in compliance with Commodity Futures Trading Commission (“CFTC”) Regulations 39.12(a)(2)(ii) and 39.12(a)(2)(iii) no later than the May 7, 2012 effective date of CFTC Regulations 39.12(a)(2)(ii) and 39.12(a)(2)(iii). ICC believes these changes are also consistent with Commission Proposed Rule 17Ad-22(b)(7).

As discussed in more detail in Item II(A) below, the changes to Chapters 1 and 2 of the ICC Rules provide for amendments to the membership qualifications of ICC and related definitions.

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

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

II. Self-Regulatory Organization's Statement of 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.

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

CFTC Regulation 39.12(a)(2)(ii) provides that “the participant requirements shall set forth capital requirements that are based on objective, transparent, and commonly accepted standards that appropriately match capital to risk. Capital requirements shall be scalable to the risks posed by clearing members.”

Accordingly, ICC revised Rule 209 (Risk-Based Capital Requirement) to provide that if at any time and for so long as a Clearing Participant has a required contribution to the ICC General Guaranty Fund that exceeds 25% of its “excess net capital,” ICC may (in addition to imposing the trading activity limitations provided for in ICC Rule 203(b)) require such Clearing Participant to prepay and maintain with ICE Clear Credit an amount up to the Clearing Participant's assessment obligation. ICC Rule 102, the definitional section of the Rules, has been amended to define “excess net capital” as the amount reported on Form 1-FR-FCM or FOCUS Report or as otherwise reported to the CFTC under CFTC Rule 1.12. For a Participant that is not an FCM or a Broker-Dealer, there is no standard equivalent to “excess net capital” which can be utilized across all types of Clearing Participant entities. Therefore, Rule 102 places the burden on the Clearing Participant to demonstrate that its capital exceeds the capital

requirement that would be applicable to it if it were an FCM, as determined pursuant to a methodology acceptable to ICC.

CFTC Regulation 39.12(a)(2)(iii) provides that “a derivatives clearing organization **shall not set a minimum capital requirement of more than \$50 million** for **any person** that seeks to become a clearing member in order to clear swaps”. [Emphasis added.]

Accordingly, ICC revised Rule 201(b)(ii) incorporates the CFTC mandated \$50,000,000 minimum adjusted net capital requirement for all ICC Clearing Participants. For a Participant that is not an FCM or a Broker-Dealer, there is no standard equivalent to “adjusted net capital” which can be utilized across all types of Clearing Participant entities. Therefore, Rule 201(b)(ii)(C) places the burden on the Clearing Participant to demonstrate that its capital exceeds the capital requirement that would be applicable to it if it were an FCM, as determined pursuant to a methodology acceptable to ICC.

In addition, in order to promote compliance with the capital adequacy requirements, Rule 201(b)(i) has been amended to provide that a Clearing Participant must be regulated for capital adequacy by a competent authority such as the CFTC, SEC, Federal Reserve Board, Office of the Comptroller of the Currency, U.K. Financial Services Authority or any other regulatory body ICC designates from time to time for this purpose, or is an affiliate of an entity that satisfies the capital adequacy regulatory requirement and is subject to consolidated holding company group supervision.

The Board of Managers approved the above amendments on March 22, 2012 after receiving recommendations to approve from the ICE Clear Credit Risk Committee on March 21, 2012, and the ICE Clear Credit Risk Management Subcommittee on March 7, 2012. However, the ICE Clear Credit Board, Risk Committee and Risk Management Subcommittee expressed

concern with respect the Amended Rules relating to Commission Proposed Rule 17Ad-22(b)(7) and CFTC Regulation 39.12(a)(2)(iii) and only recommended approval or approved the same in order for ICC to be in compliance with the law. The ICE Clear Credit Board, Risk Committee and Risk Management Subcommittee discussed with concern the extreme reduction in the minimum capital requirement from the current ICC requirement of \$5,000,000,000 for non-FCM or Broker Dealer Clearing Participants to the minimum capital requirement of \$50,000,000 mandated by CFTC Regulation 39.12(a)(2)(iii) and proposed in Commission Rule 17Ad-22(b)(7).

Similarly, the ICE Clear Credit Board, Risk Committee and Risk Management Subcommittee discussed the very significant reduction in the minimum capital requirement initially established by ICC for its FCM or Broker Dealer Clearing Participants of \$500,000,000 (subsequently reduced to \$100,000,000) to the minimum capital requirement of \$50,000,000 mandated by CFTC Regulation 39.12(a)(2)(iii) and proposed in Commission Rule 17Ad-22(b)(7). The concerns raised by the ICE Clear Credit Board, Risk Committee, and Risk Management Subcommittee are mitigated in part by the Risk-Based Capital Requirement ICC is proposing.

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to it. ICC believes that the proposed membership requirements will comply with the Act and the rules and regulations thereunder.

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

ICC does not believe that the proposed rule change would 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. 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 may be submitted by using 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 No. SR-ICC-2012-05 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C., 20549-1090.

All submissions should refer to File Number SR-ICC-2012-05. 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/032812\\_SEC\\_ICEClearCredit.pdf](https://www.theice.com/publicdocs/regulatory_filings/032812_SEC_ICEClearCredit.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-2012-05 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>3</sup>

Kevin M. O’Neill  
Deputy Secretary

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