

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66922; File No. SR-ICC-2012-05)

May 4, 2012

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Granting Accelerated Approval of Proposed Rule Change to Membership Qualifications

I. Introduction

On April 3, 2012, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-ICC-2012-05 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 April 12, 2012.³ The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change on an accelerated basis.

II. Description

The purpose of proposed rule change is to revise Rule 201(b)(ii) to incorporate the Commodity Futures Trading Commission (“CFTC”) mandated \$50,000,000 minimum adjusted net capital requirement for all ICC Clearing Participants. For a Participant that is not a Futures Commission Merchant (“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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-66766 (April 6, 2012), 77 FR 22019 (April 12, 2012). In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements is incorporated into the discussion of the proposed rule change in Section II below.

pursuant to a methodology acceptable to ICC.

In addition, in order to promote compliance with the capital adequacy requirements, Rule 201(b)(i) is 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.

Further, ICC is revising 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.

ICC believes that its membership qualification changes are in compliance with CFTC Regulations 39.12(a)(2)(ii) and 39.12(a)(2)(iii).

III. Discussion

Section 19(b)(2)(B) of the Act⁴ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. In particular, Section 17A(b)(3)(F) of the Act⁵ requires that the rules of the 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.

The proposed change would allow ICC to expand the base of potential clearing members by lowering the net capital threshold for membership, thereby promoting the prompt and accurate clearance and settlement of securities transactions, and derivative agreements, contracts, and transactions.

Further, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁶ for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register because as a registered DCO ICC is required to comply with the new CFTC regulations 39.12(a)(2)(ii) and 39.12(a)(2)(iii) by the time they become effective on May 7, 2012.

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 Act and the rules and regulations thereunder.

⁴ 15 U.S.C. 78s(b)(2)(B).

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 15 U.S.C. 78s(b)(2).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-ICC-2012-05) is approved on an accelerated basis.⁸

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill
Deputy Secretary

⁷ 15 U.S.C. 78s(b)(2).

⁸ 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).

⁹ 17 CFR 200.30-3(a)(12).