

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69356; File No. SR-ICC-2013-05)

April 9, 2013

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Related to Regulatory Reporting of Swap Data

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> and Rule 19b-4,<sup>2</sup> notice is hereby given that on March 25, 2013, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change, as modified by Amendment No. 1,<sup>3</sup> and as described in Items I and II below, which Items have been substantially prepared by the clearing agency. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

ICC proposes to add, in Chapter 2 of the ICC Rules, Rule 211 (Regulatory Reporting of Swap Data). ICC proposes to add Rule 211 in order to implement swap data repository (“SDR”) reporting (“SDR Reporting”) consistent with the Commodity Futures Trading Commission (“CFTC”) Regulations relating to the regulatory reporting of swap data, specifically Part 45 of CFTC Regulations (“Part 45”).<sup>4</sup> ICC currently complies with the CFTC’s Regulations relating

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

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

<sup>3</sup> ICC filed Amendment No. 1 to ICC-2013-05 on April 8, 2013. In Amendment No. 1, ICC amended Form 19b-4 and Exhibit 1 to include references to Commodity Futures Trading Commission Regulation 45.3.

<sup>4</sup> 17 CFR 45.

to the regulatory reporting of swap data by reporting to IntercontinentalExchange, Inc.'s SDR, selected by ICC. In order to codify ICC's practice of reporting relevant Part 45 data to the SDR selected by ICC, which is intended to meet ICC's and its Clearing Participants' swap data reporting obligations under Part 45, ICC proposes to add, in Chapter 2 of the ICC Rules, Rule 211 (Regulatory Reporting of Swap Data).

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 III below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>5</sup>

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC proposes to add, in Chapter 2 of the ICC Rules, Rule 211 in order to implement SDR Reporting consistent with CFTC Regulations 45.3,<sup>6</sup> 45.4(b),<sup>7</sup> and 45.9.<sup>8</sup> Proposed ICC Rule 211 states that for the purposes of complying with applicable CFTC rules governing the regulatory reporting of swaps, ICC will report all creation and continuation data to IntercontinentalExchange, Inc.'s SDR. In addition, proposed ICC Rule 211 provides that, upon the request of an ICC Clearing Participant that is a counterparty to a swap cleared at ICC, ICC

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<sup>5</sup> The Commission has modified the text of the summaries prepared by the clearing agency.

<sup>6</sup> 17 CFR 45.3.

<sup>7</sup> 17 CFR 45.4(b).

<sup>8</sup> 17 CFR 45.9.

shall provide the same creation and continuation data to the SDR selected by the Clearing Participant.

Proposed Rule 211 is consistent with the CFTC's Regulation 45.3<sup>9</sup> and 45.4(b),<sup>10</sup> which requires that creation and continuation data must be reported by both the derivatives clearing organization and the reporting counterparty. ICC currently complies with the CFTC's Regulation 45.3<sup>11</sup> and 45.4(b)<sup>12</sup> by reporting swap data to IntercontinentalExchange, Inc.'s SDR selected by ICC. In order to codify ICC's practice of reporting relevant Part 45 data to the SDR selected by ICC, ICC proposes to add, in Chapter 2 of the ICC Rules, Rule 211 (Regulatory Reporting of Swap Data).

The addition of ICC Rule 211 also is in response to swap dealers' mandatory compliance with CFTC Regulation 45.3<sup>13</sup> and 45.4,<sup>14</sup> which was required by February 28, 2013. ICC believes that proposed ICC Rule 211 is also consistent with the CFTC's Regulation 45.9,<sup>15</sup> which provides that swap counterparties required by Part 45 to report swap creation or continuation data may contract with third-party service providers to facilitate reporting. Proposed ICC Rule 211 ensures that ICC, in the capacity of a third-party service provider, will be able to report required swap creation and continuation data on behalf of ICC's Clearing

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<sup>9</sup> 17 CFR 45.3.

<sup>10</sup> 17 CFR 45.4(b).

<sup>11</sup> 17 CFR 45.3.

<sup>12</sup> 17 CFR 45.4(b).

<sup>13</sup> 17 CFR 45.3.

<sup>14</sup> 17 CFR 45.4.

<sup>15</sup> 17 CFR 45.9.

Participants, in compliance with the Clearing Participants' reporting obligations under CFTC's swap data reporting Regulations.

ICC believes that proposed ICC Rule 211 is consistent with the requirements of Section 17A of the Exchange Act<sup>16</sup> and the rules and regulations thereunder applicable to it. Specifically, ICC believes the proposed rule is consistent with Section 17A(b)(3)(F) of the Exchange Act,<sup>17</sup> which requires, among other things, that the rules of a 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, 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 to protect investors and the public interest. As a derivatives clearing organization registered with the CFTC, ICC must comply with CFTC Regulations, including CFTC Regulation 45.3<sup>18</sup> and 45.4.<sup>19</sup> ICC believes this proposed rule change will facilitate its own and its Clearing Participants' mandatory compliance with CFTC Regulation 45.3<sup>20</sup> and 45.4.<sup>21</sup> ICC believes that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to ICC, in particular with Section 17A(b)(3)(F), because facilitating clearing members' reporting obligations promotes the prompt and accurate clearance and settlement of securities transactions and the

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<sup>16</sup> 15 U.S.C. 78q-1.

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>18</sup> 17 CFR 45.3.

<sup>19</sup> 17 CFR 45.4.

<sup>20</sup> 17 CFR 45.3.

<sup>21</sup> 17 CFR 45.4.

safeguarding of securities and funds, and compliance with the CFTC's regulations facilitates the protection of investors and the public interest. In addition, ICC notes that the proposed change is limited to ICC's business as a derivatives clearing organization and therefore does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. For these reasons, ICC believes the proposed rule is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.<sup>22</sup>

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

(C) Clearing Agency'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. 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 Exchange Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

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<sup>22</sup> 15 U.S.C. 78q-1(b)(3)(F).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2013-05 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICC-2013-05. 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 the filing also will be available for inspection and copying at the principal office of ICC.

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-2013-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Section 19(b)(2)(C) of the Exchange Act<sup>23</sup> 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 Exchange Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act, in particular, the requirements of Section 17A of the Exchange Act, and the rules and regulations thereunder applicable to ICC.<sup>24</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Exchange Act,<sup>25</sup> which requires, among other things, that the rules of a 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, 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 to protect investors and the public interest.

Based on ICC's representations, the Commission understands that the proposed rule change is designed to codify in ICC's Rules the way in which ICC intends to comply with certain of the CFTC's swap data reporting rules and to facilitate its Clearing Participants' compliance with the same. The Commission finds that, by facilitating compliance with the swap data reporting requirements of another regulator, the proposed rule change is consistent with

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<sup>23</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>24</sup> 15 U.S.C. 78q-1.

<sup>25</sup> 15 U.S.C. 78q-1(b)(3)(F).

promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions, assuring the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and protecting investors and the public interest.

The Commission is mindful of the CFTC’s jurisdiction respecting swap data reporting and swap data repositories under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”).<sup>26</sup> The proposed rule change, which is limited to ICC’s business as a derivatives clearing organization and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service,<sup>27</sup> applies only to swaps, which are regulated by the CFTC under the CEA. In this regard, the Commission notes that section 5b(c)(2)(N) of the CEA requires that “[u]nless necessary or appropriate to achieve the purposes of [the CEA], a derivatives clearing organization shall not -- (i) adopt any rule or take any action that results in any unreasonable restraint of trade; or (ii) impose any material

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<sup>26</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010). Title VII of the Dodd-Frank Act gives the CFTC regulatory authority over swaps, including the authority to adopt rules governing SDRs and swap reporting. See, e.g., Pub. L. No. 111-203, § 727. Similarly, Title VII gives the SEC regulatory authority over security-based swaps and the authority to adopt rules governing security-based swap data repositories and security-based swap reporting. See, e.g., Pub. L. No. 111-203, § 763(i).

<sup>27</sup> Cf. Amendment to Rule Filing Requirements for Dually-Registered Clearing Agencies, Securities Exchange Act Rel. No. 69284 (Apr. 3, 2013), 78 FR 21046 (Apr. 9, 2013) (amending the Commission’s rule filing process in connection with proposed rule changes that primarily affect a registered clearing agency’s clearing operations with respect to products that are not securities and that do not significantly affect any securities clearing operations or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities service; effective 60 days from forthcoming publication in the Federal Register).



anticompetitive burden.”<sup>28</sup> Section 17A(b)(3)(I) of the Exchange Act, by contrast, requires that “[t]he rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Exchange Act].”<sup>29</sup> To the extent that the Exchange Act provisions on competition apply to swaps-related activity, the Commission finds that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>30</sup> In making this determination, the Commission is mindful of the CFTC’s jurisdiction over swap activities, and the Commission could draw a different conclusion about a similar proposal if it applied to security-based swap activity instead of swap activity.

In its filing, ICC requested that the Commission grant accelerated approval of the proposed rule change under Section 19(b)(2)(C)(iii) of the Exchange Act.<sup>31</sup> Under Section 19(b)(2)(C)(iii) of the Exchange Act,<sup>32</sup> the Commission may grant accelerated approval of a proposed rule change if the Commission finds good cause for doing so. ICC believes that accelerated approval is warranted because the proposed rule change will assist swap dealers’ mandatory compliance with CFTC Regulation 45.3<sup>33</sup> and 45.4,<sup>34</sup> which was required by

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<sup>28</sup> 7 U.S.C. 7a-1(c)(2)(N).

<sup>29</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>30</sup> In approving these proposed rule changes, the Commission has considered the proposed rule change’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>31</sup> 15 U.S.C. 78s(b)(2)(C)(iii).

<sup>32</sup> 15 U.S.C. 78s(b)(2)(C)(iii).

<sup>33</sup> 17 CFR 45.3.

<sup>34</sup> 17 CFR 45.4.

February 28, 2013. ICC states that the proposed rule change does not require any operational changes, as ICC currently complies with the CFTC's Regulations relating to the regulatory reporting of swap data by reporting to IntercontinentalExchange, Inc.'s SDR, selected by ICC. ICC notes that the proposed change is limited to ICC's business as a derivatives clearing organization and therefore does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. ICC has stated that, in its view, the proposed changes do not raise any issues that would require a lengthier review process under Section 19(b) of the Exchange Act,<sup>35</sup> and ICC does not believe the market would benefit from delaying implementation of the proposed rule changes.

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Exchange Act,<sup>36</sup> for approving the proposed rule change on an accelerated basis, prior to the 30th day after the date of publication of notice in the Federal Register, because (i) the proposed rule change is limited to ICC's business as a derivatives clearing organization and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service; and (ii) the activity relating to the non-securities clearing operations of the clearing agency for which the clearing agency is seeking approval is subject to regulation by another federal regulator.<sup>37</sup>

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<sup>35</sup> 15 U.S.C. 78s(b).

<sup>36</sup> 15 U.S.C. 78s(b)(2)(C)(iii).

<sup>37</sup> See supra note 27.

The Commission notes that ICC also has submitted ICC Rule 211 to the CFTC for self-certification pursuant to Section 5c(c)(1) of the Commodity Exchange Act (“CEA”)<sup>38</sup> and CFTC Regulation 40.6.<sup>39</sup> In connection with ICC’s submission, the CFTC received a petition for the stay of ICC’s self-certification of ICC Rule 211 from the Depository Trust & Clearing Corporation (“DTCC”), in conjunction with DTCC Data Repository (U.S.) LLC.<sup>40</sup> In its submission to the CFTC, ICC also made reference to the CFTC’s comment files relating to the submission by the Chicago Mercantile Exchange Inc. (“CME”) of CME Rule 1001 to the CFTC and “relevant references within the Statement of the [CFTC] granting approval of the CME’s Rule 1001 submission.”<sup>41</sup>

As noted above, in its consideration and approval of the proposed rule change, the Commission is mindful of the CFTC’s jurisdiction respecting swap data reporting and swap data repositories under the Dodd-Frank Act.<sup>42</sup> The Commission’s approval of the proposed rule change in no way constitutes a determination or finding by the Commission that the proposed rule change complies with or is not inconsistent with the CEA or the rules and regulation thereunder, which are determinations within the purview of the CFTC. The Commission’s

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<sup>38</sup> 7 U.S.C. §7a-2(c)(5).

<sup>39</sup> 17 CFR 40.6.

<sup>40</sup> Letter to Ms. Melissa Jurgens, CFTC, from Larry E. Thompson, General Counsel, DTCC, dated March 26, 2013, available at <http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/dtccommentltr032613.pdf>.

<sup>41</sup> ICC Rule Submission Re: SDR Reporting Rule Certification Pursuant to Section 5c(c)(1) of the CEA and [CFTC] Regulation 40.6, dated March 22, 2013, available at <http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul032213icc001.pdf>.

<sup>42</sup> See supra note 26.

approval is limited to findings under the Exchange Act and the rules and regulations thereunder in effect on the date hereof and represents neither agreement nor disagreement with the CFTC's analysis and determinations in connection with its Statement approving CME Rule 1001 or other actions to-date respecting CME's or ICC's rules relating to swap data reporting. Furthermore, the Commission's approval of the proposed rule change in no way limits or precludes any future actions by the Commission, including pending rulemakings<sup>43</sup> or proposed rule changes, in connection with security-based swaps.

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<sup>43</sup> See, e.g., Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, Securities Exchange Act Rel. No. 63346 (Nov. 19, 2010), 75 FR 75208 (Dec. 2, 2010); Security-Based Swap Data Repository Registration, Duties, and Core Principles, Securities Exchange Act Release No. 63347 (Nov. 19, 2010), 75 FR 77306 (Dec. 10, 2010), corrected at 75 FR 79320 (Dec. 20, 2010) and 76 FR 2287 (Jan. 13, 2011).

V. Conclusion

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Exchange Act<sup>44</sup> that the proposed rule change (SR-ICC-2013-05), as modified by Amendment No. 1, be, and hereby is, APPROVED on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

Elizabeth M. Murphy  
Secretary

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<sup>44</sup> 15 U.S.C. 78s(b)(2).

<sup>45</sup> 17 CFR 200.30-3(a)(12).