

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90138; File No. SR-ICC-2020-011)

October 8, 2020

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Clearing Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4,² notice is hereby given that on September 30, 2020, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission the proposed rule change, security-based swap submission, or advance notice as described in Items I, II and III below, which Items have been prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to revise ICC’s Clearing Rules (the “Rules”)³ to incorporate credit default index swaptions (“Index Swaptions”) into its summary assessment approach.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used but not defined herein have the meanings specified in the Rules.

advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. 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) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

(a) Purpose

ICC proposes revisions to the Rules to incorporate Index Swaptions into the summary assessment approach described in Rule 702(e) and Schedule 702 of the Rules. ICC proposes to make such changes to the Rules effective following Commission approval of the proposed rule change and completion of the ICC governance process surrounding the Index Swaptions product expansion. ICC has previously filed with the Commission changes to certain other policies and procedures related to clearing Index Swaptions (the “Swaption Rule Filings”).⁴ As discussed in the Swaption Rule Filings, pursuant to an Index Swaption, one party (the “Swaption Buyer”) has the right (but not the obligation) to cause the other party (the “Swaption Seller”) to enter into an index credit default swap transaction at a pre-determined strike price on a specified expiration date on specified terms. In the case of Index Swaptions that would be cleared by ICC, the

⁴ As set out in the Swaption Rule Filings, ICC intends to implement the changes described in the Swaption Rule Filings following completion of the ICC governance process surrounding the Index Swaptions product expansion. SEC Release No. 34-87297 (October 15, 2019) (approval), 84 Fed. Reg. 56270 (October 21, 2019) (SR-ICC-2019-007); SEC Release No. 34-89142 (June 24, 2020) (approval), 85 Fed. Reg. 39226 (June 30, 2020) (SR-ICC-2020-002); SEC Release No. 34-89436 (July 31, 2020) (approval), 85 Fed. Reg. 47827 (August 6, 2020) (SR-ICC-2020-008); SEC Release No. 34-89948 (September 22, 2020) (approval), 85 Fed. Reg. 60845 (September 28, 2020) (SR-ICC-2020-010).

underlying index credit default swap would be limited to certain CDX and iTraxx Europe index credit default swaps that are accepted for clearing by ICC, and which would be automatically cleared by ICC upon exercise of the Index Swaption by the Swaption Buyer in accordance with its terms. The proposed amendments to incorporate Index Swaptions into the summary assessment approach in Rule 702(e) and Schedule 702 of the Rules are described in detail as follows.

As part of ICC's end-of-day price discovery process, ICC Clearing Participants ("CPs") are required to submit end-of-day prices in accordance with the ICC Procedures, and the failure of a CP to provide submissions in accordance with the ICC Procedures constitutes a Missed Submission pursuant to Rules 404(b) and 702(b) and (e). In order to provide incentive against Missed Submissions, ICC has adopted a summary assessment approach described in Rule 702(e) and Schedule 702 of the Rules.

The proposed amendments incorporate Index Swaptions in Rule 702(e). Under current Rule 702(e)(i)(2), CPs are required to submit end-of-day prices for each Contract in which they hold a cleared interest in accordance with the ICC Procedures and each price not submitted as required is a Missed Submission. The proposed changes to Rule 702(e)(i)(2) would specify that CPs that hold a cleared interest in one or more Index Swaption Contracts sharing the same underlying index and expiration date are required to provide prices for all Index Swaption Contracts sharing the same underlying index and expiration date. Additionally, under current Rule 702(e)(ii)(2), a CP is eligible for one waiver per calendar year for single name Missed Submissions and one waiver per calendar year for index Missed Submissions caused by technical failures. Under amended Rule 702(e)(ii)(2), a CP would also be eligible for one waiver per calendar year for Index

Swaption Missed Submissions caused by technical failures. The process for requesting and reviewing waivers for Missed Submissions remains unchanged. Moreover, amended Rule 702(e)(ii)(4) includes Index Swaption, along with single name and index, as a type of Missed Submission that may satisfy the requirements of Rule 702(e)(ii)(2).

Additionally, ICC proposes updates to Schedule 702 to the Rules, which sets forth an assessment schedule, to include an assessment amount for Index Swaption Missed Submissions and correct a typographical error. Current Schedule 702 sets out assessment amounts (per missed price) in respect of index and single names. With respect to Index Swaptions, the proposed revisions would establish an assessment amount for each Missed Submission (\$250) as well as a maximum assessment per day for Missed Submissions on Index Swaption instruments sharing the same underlying index (\$10,000) and for all Index Swaption instruments during one day (\$50,000). ICC also proposes to correct a typographical error with respect to single names in the assessment schedule and replace “Submissions” with “Submission” in the phrase “For each Missed Submissions.”

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁵ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.⁶ Section 17A(b)(3)(F) of the Act⁷ requires 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

⁵ 15 U.S.C. 78q-1.

⁶ 17 CFR 240.17Ad-22.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

agreements, contracts and transactions, to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, in general, to protect investors and the public interest, and to comply with the provisions of the Act and the rules and regulations thereunder. The proposed rule change would amend ICC's summary assessment approach described in Rule 702(e) and Schedule 702 of the Rules to incorporate Index Swaptions as an incentive against Index Swaption Missed Submissions. The amendments also provide one waiver per calendar year for Index Swaption Missed Submissions caused by technical failures, which is analogous to the current provision in Rule 702(e) for single name and index Missed Submissions and is appropriately designed to maintain the integrity and effectiveness of ICC's price discovery process. Moreover, the clean-up change to Schedule 702 of the Rules to correct a typographical error ensures that the assessment schedule and the Rules remain effective, clear, and transparent to serve their intended purpose. Accordingly, in ICC's view, the proposed rule change would promote ICC's price discovery process by ensuring a clear, fair, and equitable assessment structure and is thus consistent with the prompt and accurate clearing and settlement of the contracts cleared by ICC, including Index Swaptions, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.⁸

Further, Section 17A(b)(3)(G) of the Act⁹ requires that the rules of the clearing agency provide that its participants shall be appropriately disciplined for violation of any

⁸ Id.

⁹ 15 U.S.C. 78q-1(b)(3)(G).

provision of the rules of the clearing agency, including by fine or other fitting sanction. The proposed changes are designed to ensure that CPs are appropriately disciplined for violations of the Rules, namely Missed Submissions, and set out an appropriate fining structure in Schedule 702 to the Rules that includes an assessment amount for each Index Swaption Missed Submission as well as a maximum assessment per day for Missed Submissions on Index Swaption instruments sharing the same underlying index and for all Index Swaption instruments during one day. Similar to ICC's approach for single name and index Missed Submissions, ICC proposes one waiver per calendar year for Index Missed Submissions caused by technical failures. In ICC's view, the amendments to Rule 702 and Schedule 702 to the Rules provide an appropriate assessment approach given the role of submissions in ICC's price discovery process and are thus consistent with the requirements of Section 17A(b)(3)(G) of the Act.¹⁰

Additionally, Section 17A(b)(3)(H) of the Act¹¹ requires, among other things, that the rules of the clearing agency, in general, provide a fair procedure with respect to the disciplining of participants. The process for requesting and reviewing waivers for Missed Submissions remains unchanged in Rule 702(e) and continues to provide a fair procedure with respect to disciplining CPs for Missed Submissions, consistent with Section 17A(b)(3)(H) of the Act.¹²

¹⁰ Id.

¹¹ 15 U.S.C. 78q-1(b)(3)(H).

¹² Id.

The amendments would also satisfy relevant requirements of Rule 17Ad-22.¹³ Rule 17Ad-22(e)(2)(i) and (v)¹⁴ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The ICC Procedures and the Rules clearly assign and document responsibility and accountability for risk, default management, and other key clearing house decisions and require consultation or approval from relevant parties. ICC determined to make the proposed changes in accordance with its governance process, which included review by the Risk Committee and review and approval by the Board of the proposed changes. ICC thus continues to maintain policies and procedures that are reasonably designed to provide for clear and transparent governance arrangements and specify clear and direct lines of responsibility, consistent with Rule 17Ad-22(e)(2)(i) and (v).¹⁵

Rule 17Ad-22(e)(6)(iv)¹⁶ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. As discussed above, the proposed changes provide incentive

¹³ 17 CFR 240.17Ad-22.

¹⁴ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

¹⁵ Id.

¹⁶ 17 CFR 240.17Ad-22(e)(6)(iv).

against Index Swaption Missed Submissions by incorporating Index Swaptions into ICC's summary assessment approach in the Rules and also provide one waiver per calendar year for Index Swaption Missed Submissions caused by technical failures. In ICC's view, the proposed changes ensure a fair and equitable assessment structure with respect to Index Swaptions and thus are appropriately designed to support and maintain the integrity and effectiveness of ICC's price discovery process that provides reliable prices, consistent with the requirements of Rule 17Ad-22(e)(6)(iv).¹⁷

(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 not necessary or appropriate in furtherance of the purpose of the Act. The proposed rule change amends Rule 702(e) and Schedule 702 of the Rules to incorporate Index Swaptions and will apply uniformly across all market participants. Accordingly, ICC does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice 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, Security-Based Swap Submission, or Advance Notice 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

¹⁷ Id.

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 such 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, security-based swap submission, or advance notice is consistent with the 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICC-2020-011 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-ICC-2020-011. 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, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice 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 am and 3:00 pm. 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/clear-credit/regulation>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICC-2020-011 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).