

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90524; File No. SR-ICC-2020-013)

November 27, 2020

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to ICC's Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4,² notice is hereby given that on November 16, 2020, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. On November 25, 2020, ICC filed Partial Amendment No. 1 to the proposed rule change.³ ICC filed the proposed rule change pursuant Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter the "proposed rule change"), from interested persons.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Partial Amendment No. 1 to the proposed rule change, ICC provided additional details and analyses surrounding the proposed rule change in the form of a confidential Exhibit 3. Partial Amendment No. 1 did not make any changes to the substance of the filing or the text of the proposed rule change.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(2).

The principal purpose of the proposed rule change is to modify ICC's fee schedule to introduce two credit default index swaption ("Index Swaption") volume incentive programs. These revisions do not require any changes to the ICC Clearing Rules.

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

(a) Purpose

The proposed changes are intended to modify ICE Clear Credit's fee schedule to introduce two Index Swaption volume incentive programs for house origin Index Swaption transactions. 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.⁶ In the case of Index Swaptions that may be

⁶ ICC previously filed with the Commission changes to certain other policies and procedures related to clearing Index Swaptions (the "Swaption Rule Filings"). See the Swaption Rule Filings for additional details. 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

cleared by ICC, the underlying index credit default swap is 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.⁷ The proposed changes are described in detail as follows.

ICC maintains a Clearing Participant (“CP”) fee schedule⁸ that is publicly available on its website, which ICC proposes to update in connection with the proposed volume incentive programs. Currently, clearing fees are due by CPs in accordance with the product, amount and currency set out in the fee schedule. ICC proposes to amend this fee schedule to include details on the volume incentive programs, subject to any regulatory review or approval process.

ICC previously filed with the Commission the relevant clearing fees for Index Swaptions⁹ and further proposes to amend the CP fee schedule to introduce the volume incentive programs for house origin Index Swaption transactions. Under the amended fee schedule, the proposed Standard Program automatically, and without further action by CPs, applies to CPs and provides a tiered discount schedule based on USD equivalent,

Release No. 34-89948 (September 22, 2020) (approval), 85 Fed. Reg. 60845 (September 28, 2020) (SR-ICC-2020-010).

⁷ Index Swaptions are also referred to herein and in the Swaption Rule Filings as “index options” or “index CDS options”, or in similar terms.

⁸ CP fee details available at: https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees_Clearing_Participant.pdf.

⁹ SEC Release No. 34-90299 (October 30, 2020) (notice), 85 Fed. Reg. 70700 (November 5, 2020) (SR-ICC-2020-012).

non-discounted Index Swaption fees billed since the start of the year (“Billed Fees”). The first 300,000 of Billed Fees are not discounted, a 10% discount is provided for the second 300,000 of Billed Fees, a 20% discount is provided for the third 300,000 of Billed Fees, and a 30% discount is provided for all cleared Index Swaptions above that level. As an alternative to the Standard Program, CPs may elect to participate in the annual Prepaid Program. For calendar year 2021, the proposed Prepaid Program election deadline is January 25, 2021 and requires an upfront payment of \$750,000 by February 1, 2021. Index Swaption fees are \$2/million or €2/million, and the upfront payment is applied toward the first \$750,000 of Index Swaption clearing fees due in 2021. The discount or prepaid fee schedule would be applied at the time of invoice.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of the Act, including Section 17A of the Act¹⁰ and the regulations thereunder applicable to it. More specifically, the proposed rule change establishes or changes a member due, fee or other charge imposed by ICC under Section 19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2)¹² thereunder. ICC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(D),¹³ which requires that the rules of the clearing agency

¹⁰ 15 U.S.C. 78q-1.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78q-1(b)(3)(D).

provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

ICC believes that the proposed fee discounts for house origin Index Swaption transactions have been set at an appropriate level. In ICC's view, the proposed fees are reasonable under each proposed volume incentive program as the discounts correspond with anticipated volumes, costs and expenses, and revenues under each program, and they consider current market activity as well as anticipated market activity with respect to clearing house origin Index Swaption transactions at ICC. Namely, in determining the appropriate discount level and program structure, ICC discussed the proposed volume incentive programs with its Board (who approved the programs and discounts) and took into account factors such as anticipated volume, revenue, expenses, and CP market participation in this clearing service, including based on different fee levels. More specifically, the proposed discounts are associated with anticipated volumes via the tiered discount schedule in the Standard Program and the upfront payment applied toward clearing fees in the Prepaid Program, and are designed to encourage CP market participation to bring increased volume to grow the clearing service while properly compensating ICC for the risks, costs and expenses of clearing house origin Index Swaption transactions.

Moreover, the proposed fee changes will apply equally to all market participants clearing house origin Index Swaption transactions. Namely, the Standard Program automatically, and without further action by CPs, applies to all CPs. As an alternative to the Standard Program, any CP may elect to participate in the annual Prepaid Program, which requires election and an upfront payment by specified dates. Therefore, the

proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among participants, within the meaning of Section 17A(b)(3)(D) of the Act.¹⁴ ICC therefore believes that the proposed rule change is consistent with the requirements of Section 17A of the Act¹⁵ and the regulations thereunder applicable to it and is appropriately filed pursuant to Section 19(b)(3)(A) of the Act¹⁶ and paragraph (f)(2) of Rule 19b-4¹⁷ thereunder.

(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. As discussed above, the proposed changes modify ICC's fee schedule to introduce two volume incentive programs for house origin Index Swaption transactions and will apply uniformly across all market participants clearing house origin Index Swaption transactions. The implementation of such changes does not preclude other market participants from offering similar incentive programs. Moreover, ICC does not believe that the amendments would adversely affect the ability of market participants to access clearing services. Accordingly, ICC does not believe the amendments impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

¹⁴ Id.

¹⁵ 15 U.S.C. 78q-1.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(2).

(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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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:

- 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-2020-013 on the subject line.

Paper Comments:

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549.

All submissions should refer to File Number SR-ICC-2020-013. 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, N.E., Washington, D.C. 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/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-2020-013 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).