

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90841; File No. SR-ICC-2020-014)

January 4, 2021

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 22, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The principal purpose of the proposed rule change is to revise the ICC Clearing Participant (“CP”) Default Management Procedures (“Default Management Procedures”).

These revisions do not require any changes to the ICC Clearing Rules (the “Rules”).³

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, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change,

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.

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

(a) Purpose

ICC proposes to revise the Default Management Procedures, which set forth ICC's default management process, including the actions taken by ICC to determine that a CP is in default as well as the actions taken by ICC in connection with such default to close-out the defaulter's portfolio. These revisions do not require any changes to ICC's existing default management rules or any other procedures as they are limited to clarification changes that formalize the process for convening the CDS Default Committee remotely and minor updates regarding notifications sent as part of the default management process. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

ICC proposes revisions to Subsection 4.4 (Secure Trading Facility) related to convening the ICC CDS Default Committee, which consists of trading personnel seconded from CPs to assist with default management. The proposed changes specify that ICC may convene its CDS Default Committee in a private room at its offices ("Secure Trading Facility") or remotely by teleconference ("Remote Trader Consultation") in the event the committee is unable to meet in person. The decision of whether to convene in

person or remotely would be made by the ICC Chief Risk Officer (“CRO”) and would depend on the circumstances at the time of the declaration of the default.

ICC also proposes updates to Section 6 (Default Declaration). The proposed changes to Subsection 6.1.5 (CCO Pre-Declaration Initiated Actions) allow the ICC Chief Compliance Officer (“CCO”) to inform the Commission and the Commodity Futures Trading Commission (“CFTC”) by telephone or email of a potential default and further direct the CCO to inform other regulators of the potential default as may be required. Amended Subsection 6.4 (Default Declaration Notification) similarly directs the CCO to notify other regulators (in addition to the Commission and the CFTC) of a default if applicable and includes a minor edit to replace “all” with “above” in the phrase “CCO confirming all notifications.” The proposed updates to Subsection 6.5.3 (CRO Post-Declaration Preparation) relate to the CRO’s actions to convene the CDS Default Committee following a declaration of default, including the CRO’s determination of whether this committee meets in person or remotely, and distinguish certain actions that would be taken for an in-person CDS Default Committee meeting. The proposed revisions to Subsection 6.5.4 (CCO Post-Declaration Actions) make minor clarifications in respect of the notice that the CCO provides to the compliance personnel of a CDS Default Committee member following a declaration of a default.

ICC further proposes changes to Section 7 (CDS Default Committee Consultation). The proposed changes reference ICC’s ability to convene the CDS Default Committee remotely. Amended Subsection 7.1 (Convening a CDS Default Committee Meeting) formalizes the process for convening a CDS Default Committee remotely by teleconference, including how notice is provided to CDS Default Committee members

and what is included in the notice. The changes also distinguish what actions would be taken in connection with convening the CDS Default Committee at the Secure Trading Facility, by Remote Trader Consultation, or by either means. Amended Subsection 7.3 (Initial CDS Default Committee Meeting) specifies that certain actions are conducted where technologically practicable during the initial CDS Default Committee meeting and includes minor grammatical updates, including adding a parenthetical and updating the sentence structure for clarity.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁴ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.⁵ In particular, Section 17A(b)(3)(F) of the Act⁶ requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, 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. ICC believes that 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 17(A)(b)(3)(F)⁷, because the proposed rule change enhances ICC's ability to manage the risk of a default by formalizing the process for convening the CDS Default Committee

⁴ 15 U.S.C. 78q-1.

⁵ 17 CFR 240.17Ad-22.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ Id.

remotely and including minor updates regarding notifications sent as part of the default management process. The clarification and clean-up changes ensure that the documentation of ICC's Default Management Procedures remains up-to-date, transparent, and focused on clearly articulating the policies and procedures used to support ICC's default management process such that ICC can take timely action in case of a default. ICC believes that such changes augment ICC's procedures relating to default management and enhance ICC's ability to withstand defaults and continue providing clearing services, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and the protection of investors and the public interest. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.⁸

The amendments would also satisfy relevant requirements of Rule 17Ad-22.⁹ Rule 17Ad-22(e)(2)(i) and (v)¹⁰ requires each covered clearing agency to establish,

⁸ Id.

⁹ 17 CFR 240.17Ad-22.

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

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 Default Management Procedures clearly assign and document responsibility and accountability for default management actions and decisions. The proposed changes specify that the CRO is responsible for determining whether to convene the CDS Default Committee in person or remotely by teleconference. Moreover, the proposed revisions continue to allow for feedback from, and notification to, relevant stakeholders, such as the CDS Default Committee, CPs, and regulators. These governance arrangements are clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of relevant committees and ICC personnel is clearly documented. In ICC's view, the proposed rule change continues to ensure that ICC maintains 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).¹¹

Rule 17Ad-22(e)(4)(ii)¹² requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the

¹¹ Id.

¹² 17 CFR 240.17Ad-22(e)(4)(ii).

two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. The proposed changes set out procedures for convening the CDS Default Committee remotely, which enhances ICC's ability to manage a default if circumstances prevent the CDS Default Committee from meeting in person. The proposed changes further enhance ICC's procedures for managing a default by ensuring that relevant individuals are notified, including through additional details on how individuals are notified and what is included in the notice, and can take timely action during the default management process. As such, the proposed amendments would strengthen ICC's ability to maintain its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad-22(e)(4)(ii).¹³

Rule 17Ad-22(e)(13)¹⁴ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring its participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto. The proposed changes continue to ensure that ICC can take timely action to contain losses and liquidity demands and continue meeting its obligations in the event of a default, including by formalizing and detailing procedures

¹³ Id.

¹⁴ 17 CFR 240.17Ad-22(e)(13).

for convening the CDS Default Committee remotely, which promotes ICC's ability to efficiently and safely manage its close-out process where the CDS Default Committee cannot meet in person, thereby enhancing ICC's ability to withstand defaults and continue providing clearing services. Additionally, ICC believes that the notification related updates and clean-up changes further enhance ICC's default management process by ensuring that relevant stakeholders receive necessary information and that the Default Management Procedures remain up-to-date, clear, and transparent to ensure that ICC can take timely action to contain losses and liquidity demands and continue meeting its obligations in the event of a default. Therefore, ICC believes the proposed rule change is consistent with the requirements of Rule 17ad-22(e)(13).¹⁵

(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. The proposed changes to the Default Management Procedures will apply uniformly across all market participants. Therefore, ICC does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(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.

¹⁵ Id.

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 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 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-2020-014 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-2020-014. 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 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-2020-014 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).