

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92468; File No. SR-ICC-2021-016)

July 22, 2021

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the ICC Exercise Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 8, 2021, 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 Exercise Procedures in connection with the clearing of credit default index swaptions (“Index Swaptions”).

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, security-based swap submission, or advance notice. The text of these statements may be

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 revising the Exercise Procedures in connection with the clearing of Index Swaptions. The Exercise Procedures supplement the provisions of Subchapter 26R of the ICC Clearing Rules (the "Rules") with respect to Index Swaptions³ and provide further detail as to the manner in which Index Swaptions may be exercised by Swaption Buyers, the manner in which ICC will assign such exercises to Swaption Sellers, and certain actions that ICC may take in the event of technical issues. ICC proposes to make the changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

ICC proposes changes related to certain fallback measures included in the Exercise Procedures. ICC proposes to amend Paragraph 2.6, which includes procedures to address a failure of the electronic system established by ICC for exercise ("Exercise System Failure"). In such case, Paragraph 2.6 currently provides ICC with the following options: (i) cancel and reschedule the Exercise Period (i.e., the period on the expiration

³ 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 cleared by ICC, the underlying index credit default swap is limited to certain CDX and iTraxx 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.

date of an Index Swaption during which the Swaption Buyer may deliver an exercise notice to ICC to exercise all or part of such Index Swaption); (ii) determine that automatic exercise will apply; and/or (iii) take such other action as ICC determines to be appropriate to permit exercising parties to submit exercise notices and to permit ICC to assign such notices. The proposed changes remove the ability to cancel and reschedule the Exercise Period and renumber the following options accordingly.

ICC maintains the ability to effect an automatic exercise under Paragraph 2.8, which addresses the situation where ICC will automatically exercise on the expiration date each open position (of all exercising parties) in an Index Swaption that is determined by ICC to be “in the money” on such date. Whether an Index Swaption is “in the money” is currently based on the average of the end-of-day (“EOD”) price of the underlying CDS contract on the preceding business day and on the expiration date, and where relevant, also based on the average of the EOD price on the preceding business day and on the expiration date of each single name constituent contract with respect to which an Existing Restructuring⁴ has occurred. Under the proposed changes, whether an Index Swaption is “in the money” is based on the relevant market-observed prices for the underlying CDS contract determined by ICC using the intraday market data available to it at the time, or the EOD price of the underlying CDS contract on the expiration date established at any Intercontinental Exchange, Inc. (“ICE”) clearinghouse, and where relevant, also based on the last available ICE EOD price of each single name constituent contract with respect to

⁴ An Existing Restructuring is defined in ICC Rule 26R-319(c) and is applicable upon the occurrence of an M(M)R Restructuring Credit Event with respect to an Index Swaption for which the DC Credit Event Announcement or Regional CDS Committee Restructuring Announcement occurs on or prior to the expiration date.

which an Existing Restructuring has occurred. Such changes provide ICC with additional flexibility, as ICC need not wait until EOD to execute an automatic exercise, and allow this fallback measure to coincide with the timing of the Exercise Period.⁵

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁶ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.⁷ In particular, Section 17A(b)(3)(F) of the Act⁸ 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 proposes changes related to certain fallback measures in the Exercise Procedures. Removing the option to cancel and reschedule the Exercise Period under Paragraph 2.6 would streamline and simplify ICC's procedures in the case of an Exercise System Failure, thereby reducing the potential for confusion regarding ICC's practices under such circumstances. Moreover, to provide consistency where possible in the event of an

⁵ The Exercise Period starts at the Swaption Exercise Start Time (with respect to an Index Swaption referencing a CDX.NA index, 9:00 a.m., New York time and referencing an iTraxx Europe index, 9:00 a.m., London time) and ends at the Swaption Exercise Cut-Off Time (with respect to an Index Swaption referencing a CDX.NA index, 11:00 a.m., New York time and referencing an iTraxx Europe index, 4:00 p.m., London time) under the Exercise Procedures.

⁶ 15 U.S.C. 78q-1.

⁷ 17 CFR 240.17Ad-22.

⁸ 15 U.S.C. 78q-1(b)(3)(F).

Exercise System Failure, amended Paragraph 2.8 allows the timing of automatic exercise to coincide with the timing of the Exercise Period. Accordingly, in ICC's view, the proposed rule change will facilitate understanding of how unforeseen operational or technical issues are handled and promote preparedness by market participants to enhance the implementation of the Exercise Procedures, thereby promoting 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.⁹

The amendments would also satisfy relevant requirements of Rule 17Ad-22.¹⁰ Rule 17Ad-22(e)(1)¹¹ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. The Exercise Procedures supplement the provisions of Subchapter 26R of the Rules with respect to Index Swaptions and further ensure that ICC's Rules clearly reflect the terms and conditions applicable to Index Swaptions. As described above, the proposed revisions would support the clearing of Index Swaptions by ICC by providing additional consistency to market participants and simplifying the procedures in the case of an Exercise System Failure. The proposed rule change would

⁹ Id.

¹⁰ 17 CFR 240.17Ad-22.

¹¹ 17 CFR 240.17Ad-22(e)(1).

continue to support the legal basis for ICC’s clearance of Index Swaptions and operation of the exercise and assignment process, including addressing situations where there are operational or technical issues. As such, the proposed rule change would satisfy the requirements of the Rule 17Ad-22(e)(1).¹²

Rule 17Ad-22(e)(17)¹³ requires, in relevant part, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by (i) identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls; and (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. The Exercise Procedures allow ICC to manage the operational risks associated with the exercise and assignment process by establishing procedures for the exercise and assignment of Index Swaptions and including fallback measures, which help mitigate the impact from operational or technical issues and ensure that the system has a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. The proposed changes remove the option to cancel and reschedule an Exercise Period, which would reduce the potential for confusion regarding ICC’s practices under such circumstances. The proposed changes also provide ICC with additional flexibility for determining whether an Index Swaption is “in the money” such that ICC need not wait until EOD to execute an automatic exercise to provide consistency where possible in the

¹² Id.

¹³ 17 CFR 240.17Ad-22(e)(17)(i)-(ii).

case of an Exercise System Failure. ICC believes that these amendments would streamline and simplify ICC's procedures in the event of an Exercise System Failure and help mitigate the impact from operational or technical issues. The proposed rule change is therefore reasonably designed to meet the requirements of Rule 17Ad-22(e)(17).¹⁴

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

ICC does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The proposed changes to the Exercise Procedures will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes 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 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 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

¹⁴ Id.

(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-2021-016 on the subject line.

Paper Comments:

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-2021-016. 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-2021-016 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.¹⁵

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).