

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92895; File No. SR-ICC-2021-016)

September 8, 2021

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

I. Introduction

On July 8, 2021, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, (the “Act”),¹ and Rule 19b-4,² a proposed rule change to revise the Exercise Procedures in connection with the clearing of credit default index swaptions (“Index Swaptions”). The proposed rule change was published for comment in the Federal Register on July 28, 2021.³ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The Exercise Procedures supplement the provisions of Subchapter 26R of the ICC Clearing Rules (the “Rules”) with respect to Index Swaptions 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Exercise Procedures; Exchange Act Release No. 92468 (July 28, 2021); 86 Fed. Reg. 40665 (July 28, 2021) (SR-ICC-2021-016) (“Notice”).

that ICC may take in the event of technical issues.⁴ The proposed rule change would amend two sections of the Exercise Procedures: Paragraph 2.6 Exercise System Failure and Paragraph 2.8 Automatic Exercise for Exercise System Failure.⁵

A. Paragraph 2.6 Exercise System Failure

Currently, in the event that ICC's electronic system for the submission and assignment of Swaption Exercise Notices (ICC's "Exercise System") fails to be in operation under certain circumstances, the Exercise Procedures provide ICC with the following options: (i) cancel and reschedule the Exercise Period (i.e., the period on the expiration 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 rule change would remove ICC's ability to cancel and reschedule the Exercise Period under such circumstances and renumber the paragraph. This would facilitate exercise when there is a system's failure and avoid uncertainty that could arise if an Exercise Period is rescheduled.

B. Paragraph 2.8 Automatic Exercise for Exercise System Failure

Currently, if automatic exercise applies pursuant to Paragraph 2.6, Paragraph 2.8 specifies the parameters under which such automatic exercise will apply. Under Paragraph 2.8, ICC maintains the ability to effect an automatic exercise on the expiration

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in the ICC Rules, as applicable.

⁵ The description of the proposed rule change is excerpted substantially from the Notice.

date on each open position (of all exercising parties) in an Index Swaption that is determined by ICC to be “in the money” on such date. Currently, whether an Index Swaption is “in the money” is 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 Restructuring has occurred. In practice, this could result in an exercise not occurring during a systems failure if the EOD reference prices are not in the money even if they would have been in the money based on intra-day pricing. Under the proposed rule change, whether an Index Swaption is “in the money” would be 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 of the Expiration Period, 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 which an Existing Restructuring has occurred. This approach provides ICC more flexibility to ensure exercise is based on various reference prices.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act 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 Act and the rules and regulations thereunder

applicable to such organization.⁶ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁷ and Rule 17Ad-22(e)(17)(i).⁸

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.⁹

As noted above, ICC is proposing to make changes to certain exercise procedures related to systems failures. The Commission believes that by removing the option to cancel and reschedule the Exercise Period under Paragraph 2.6, the proposed rule change would help to streamline and simplify the Exercise Procedures in the case of an Exercise System Failure and thereby clarify that cancellations and rescheduling will not occur and that exercises will take place during systems failures. The Commission believes that this in turn will enhance ICC's ability to promptly and accurately clear and settle transactions during systems failures.

⁶ 15 U.S.C. 78s(b)(2)(C).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 17 CFR 240.17Ad-22(e)(17)(i).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

Additionally, automatic exercise applies to an Index Swaption that is determined by ICC to be in the money. As noted above, under the proposed rule change, whether an Index Swaption is “in the money” will be 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 ICE clearinghouse, and where relevant, also based on the last available ICE EOD price of each single name constituent contract with respect to which an Existing Restructuring has occurred. This will allow ICC additional flexibility for determining whether an Index Swaption is in the money and facilitate exercise based on various reference prices, which the Commission believes provides the ability to reflect accurate prices thereby enhancing ICC’s ability to promptly and accurately settle and clear transactions during systems failures.

For the reasons stated above, the Commission finds that the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.¹⁰

B. Consistency with Rule 17Ad-22(e)(17)(i)

Rule 17Ad-22(e)(17) requires, in relevant part, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, manage its operational risks by 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.¹¹

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 17 CFR 240.17Ad-22(e)(17)(i).

The Commission believes that by revising its Index Swaption Exercise Procedures, as noted above, to remove the ability to cancel or reschedule exercises and to add flexibility to use various reference prices for determining if an Index Swaption is in the money during systems failures, the proposal allows ICC to manage the risks posed by a systems failure by (i) increasing certainty around the timing of the Exercise Period and (ii) increasing the likelihood that an Index Swaption would be categorized as being in-the-money, and therefore automatically exercised, as expected. The Commission believes that this in turn supports ICC's ability to mitigate the consequences of a systems failure and promote systems that have a high degree of resiliency and operational reliability.

For these reasons, the Commission believes the proposed rule change is consistent with Rule 17Ad-22(e)(17)(i).¹²

¹² Id.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act¹³ and Rules 17Ad-22(e)(17)(i).¹⁴

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁵ that the proposed rule change (SR-ICC-2021-016), be, and hereby is, approved.¹⁶

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴ 17 CFR 240.17Ad-22(e)(17)(i).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ 17 CFR 200.30-3(a)(12).