

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87502; File No. SR-ICC-2019-011)

November 12, 2019

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 Default Auction Procedures—Initial Default Auctions and the ICC Secondary Auction Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 31, 2019, 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 Default Auction Procedures—Initial Default Auctions (“Initial Default Auction Procedures”) and Secondary Auction Procedures (collectively, “the Auction Procedures”). These revisions do not require any changes to the ICC Clearing Rules (the “Rules”).³

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.

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 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 to revise its Initial Default Auction Procedures and to make analogous changes to its Secondary Auction Procedures. The Initial Default Auction Procedures are designed to facilitate liquidation of the defaulter's portfolio through a multi-lot modified Dutch auction. The Secondary Auction Procedures, which also use a modified Dutch auction format, are intended to provide for an effective final auction of the entire remaining portfolio. 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.

The purpose of the proposed amendments is to incorporate the automated Default Management System ("DMS") and All or Nothing Bidding into the Auction Procedures and make additional clarification and clean-up changes. ICC proposes revisions that

reflect the use of the automated DMS to replace certain manual tasks in the auction process. ICC also proposes to allow for All or Nothing Bidding in the Auction Procedures. Currently, should a bid (“Standard Bid”) for 100% of the portfolio be a winning bid, the portion of the auction portfolio awarded to the 100% Standard Bid is shared with any more competitively priced Standard Bids, in which case the award related to the 100% Standard Bid is for less than 100%. Under the revised procedures, in addition to the submission of Standard Bids, participants will be allowed to optionally submit an All or Nothing Bid, in addition to, or in lieu of, one or more Standard Bids. Should an All or Nothing Bid be a winning bid, 100% of the auction portfolio will be awarded to the All or Nothing Bidder, without the award being split amongst any more competitively priced Standard Bids.

Initial Default Auction Procedures

ICC proposes to amend ‘The Auction Process’ section to incorporate the DMS and make clarifying edits regarding the auction process. Participants currently have an obligation to bid for each lot in a minimum amount determined by ICC (“Minimum Bid Requirement”). ICC proposes to reflect the use of the DMS to communicate the Minimum Bid Requirement and to remove Annex B that contains a template for communicating the Minimum Bid Requirement. ICC also proposes clarifying language regarding the case where a Participant has outsourced its Minimum Bid Requirement to an affiliated Participant. Moreover, under the revised procedures, Auction Specifications (i.e., information on contracts to be auctioned, timing for the bidding process, etc.) are communicated through the DMS and Annex A, which contains a template for communicating Auction Specifications, is removed. ICC proposes to specify that bids

must be submitted through the DMS (“Bid Submission”), only during a specified time window and prior to the “Bidding Close Time”, and make corresponding changes throughout the document. ICC further proposes updates relating to the submission of bids through the DMS, including preventing the submission of bids below the minimum bid size.

ICC proposes changes to ‘The Bidding Process’ section to allow for All or Nothing Bidding. ICC proposes to define “AP” as the auction clearing price for a lot, proportionally scaled to a portfolio size representing 100% of the relevant lot. ICC proposes to define “BP” as the more competitive of (1) the weighted average bid price of all valid Standard Bids made by such auction participant and (2) the price of any valid All or Nothing Bid made by such auction participant, both proportionately scaled to a portfolio size representing 100% of the relevant lot. If an auction participant submits only an All or Nothing Bid, or submits an All or Nothing Bid and Standard Bids but the Standard Bids do not meet the Minimum Bid Requirement, then the average price is the price of the All or Nothing Bid. If an auction participant submits only Standard Bids, then the average bid price calculation is unchanged from the current procedures. ICC proposes further revisions that distinguish All or Nothing Bids from Standard Bids. Additionally, to satisfy the Minimum Bid Requirement, ICC proposes to note that any individual bid must be equal to or larger than any applicable minimum bid size.

ICC proposes to update the ‘Participation by Customers in the Auction’ section, stating that a Participant may make separate bids in respect of its customers and adding a reference to the Auction Specifications.

ICC proposes to amend the ‘Selection of the Winning Bid’ section. ICC proposes updates related to sorting the submitted bids and determining the auction clearing price. ICC proposes revisions to Examples 1-3, which show the calculation of the auction clearing price, to be more descriptive and incorporate All or Nothing Bidding. The proposed amendments change the first column heading from “Ranking” to “Price Rank”; change the second column heading from “Cash Bid” to “Size x Price” and move this column second from last; add a column titled “Is All or Nothing Bid” directly after the first column; change the third column heading from “% of Portfolio” to “Bid Size (% of Auction Portfolio)”; change the fourth column heading from “Cash/1%” to “Bid Price (Payment per 100%)” and update the numbers in the column accordingly; and update the auction clearing price to be per 100%. ICC proposes to add a new Example 4, to show the calculation of the auction clearing price with an All or Nothing Bid. ICC also proposes explanatory language relating to All or Nothing Bidding. Specifically, if an All or Nothing Bid sets the auction clearing price, no Standard Bids will receive a share of the auction portfolio even if their bid prices are higher than or equal to the auction clearing price. If there are multiple All or Nothing Bids at the auction clearing price, the portfolio will be allocated equally among the auction participants submitting such All or Nothing Bids. For the case where ICC determines the auction clearing price for less than 100% of the portfolio, ICC proposes clarifications regarding All or Nothing Bidding and updates to such example calculation to conform with Examples 1-3. ICC proposes additional amendments, including publishing an Auction Specification to the DMS for a second auction; making minor grammatical edits, such as replacing definite article “the” with indefinite article “a” in the phrase “the ‘Winning Bidder’” and replacing the phrase

“relevant Participant” with “relevant Participant(s)”; and using the DMS to notify a bidder of a winning bid.

Secondary Auction Procedures

ICC proposes analogous changes to the Secondary Auction Procedures. ICC proposes to revise ‘The Auction Process’ section to be consistent with the Initial Default Auction Procedures. ICC proposes to reflect the use of the DMS to communicate the Minimum Bid Requirement and to add clarifying language regarding the case where a Participant has outsourced its Minimum Bid Requirement to an affiliated Participant. The revised procedures use the DMS to communicate Secondary Auction Specifications, clarify that Bid Submission occurs through the DMS until the “Bidding Close Time” and make conforming changes throughout the document, and include updates relating to the submission of bids using the DMS.

ICC proposes revisions to ‘The Bidding Process’ section to allow for All or Nothing Bidding to maintain uniformity with the Initial Default Auction Procedures. ICC proposes to similarly define “BP” as the more competitive of (1) the weighted average bid price of all valid Standard Bids made by such secondary auction participant and (2) the price of any valid All or Nothing Bid made by such auction participant, both proportionately scaled to a portfolio size representing 100% of the relevant lot. If a secondary auction participant submits only an All or Nothing Bid, or submits an All or Nothing Bid and Standard Bids but the Standard Bids do not meet the Minimum Bid Requirement, then the average price is the price of the All or Nothing Bid. If a secondary auction participant submits only Standard Bids, then the average bid price calculation is unchanged from the current procedures. ICC proposes further revisions that distinguish

All or Nothing Bids from Standard Bids. To satisfy the Minimum Bid Requirement, ICC also proposes to note that any individual bid must be equal to or larger than any applicable minimum bid size.

ICC similarly proposes to update the ‘Participation by Customers in the Auction’ section, stating that a Participant may make separate bids in respect of its customers and adding a reference to the Auction Specifications.

ICC proposes amendments to the ‘Selection of the Winning Bid’ section to be consistent with the Initial Default Auction Procedures. ICC proposes updates related to sorting the submitted bids and determining the auction clearing price. With respect to Examples 1-3 and new Example 4, ICC proposes parallel updates to those described in the Initial Default Auction Procedures. Similarly, under the revised procedures, if an All or Nothing Bid sets the secondary auction clearing price, no Standard Bids will receive a share of the auction portfolio even if their bid prices are higher than or equal to the secondary auction clearing price. If there are multiple All or Nothing Bids at the secondary auction clearing price, the portfolio will be allocated equally among the secondary auction participants submitting such All or Nothing Bids. ICC proposes additional changes, including making minor grammatical edits, such as replacing definite article “the” with indefinite article “a” in the phrase “the ‘Winning Bidder’” and replacing the phrase “relevant Participant” with “relevant Participant(s)” and using the DMS to notify a bidder of a winning bid.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act⁴ requires, among other things, 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 agreements, contracts and transactions; to assure the safeguarding of securities and funds which are 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. 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)⁵, because ICC believes that the proposed changes to the Auction Procedures enhance ICC's ability to manage the risk of defaults. The proposed changes introduce All or Nothing Bidding to ICC's existing auction methodology. This new bid type rewards auction participants for bidding competitively on both size and price, rather than just price. If an All or Nothing Bid sets the auction clearing price, the revised Auction Procedures award 100% to that bid, rather than splitting the award with participants bidding more competitively on price but with smaller size. Such changes incentivize competitive bidding by rewarding auction participants for bidding competitively on both price and size and are designed to promote effective and efficient auctions to facilitate the close-out of the defaulter's portfolio. Moreover, the proposed changes reflect the use of the automated DMS to replace certain manual tasks in the auction process, including communicating the Minimum Bid

⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁵ Id.

Requirement and Auction Specifications, submitting bids, and notifying winning bidders. Such changes allow ICC to more efficiently and safely manage its auction process and reduce the risk of error. The clarification and clean-up changes provide greater specificity and transparency with respect to the Auction Procedures such that auction participants have greater certainty regarding the process for auction participation. ICC believes that the proposed amendments 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.⁶

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad-22.⁷ Rule 17Ad-22(b)(3)⁸ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient

⁶ Id.

⁷ 17 CFR 240.17Ad-22.

⁸ 17 CFR 240.17Ad-22(b)(3).

financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions. ICC believes that the proposed revisions enhance its Auction Procedures. As described above, the optional All or Nothing Bid incentivizes competitive bidding, promoting the goal of reaching an efficient auction clearing price that permits ICC to close out the defaulter's portfolio and return ICC to a matched book. Such new bid type rewards auction participants for bidding competitively on both size and price and may increase the willingness and ability of Participants and their customers to participate in an auction and absorb the defaulter's positions through the default management process. Moreover, the proposed changes that reflect the use of the automated DMS to replace certain manual tasks in the auction process promote ICC's ability to efficiently and safely manage its auction process in a default event. In ICC's view, these enhancements represent tools that strengthen ICC's ability to manage its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad-22(b)(3).⁹

Rule 17Ad-22(d)(8)¹⁰ requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act¹¹ applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of ICC's risk management procedures. Under the Auction Procedures, ICC will consult with the ICC CDS Default

⁹ Id.

¹⁰ 17 CFR 240.17Ad-22(d)(8).

¹¹ 15 U.S.C. 78q-1.

Committee (consisting of trading personnel seconded from Participants to assist with default management) for key decisions relating to initial default auctions and secondary auctions, including dividing the defaulter's portfolio into discrete auctions, determining the auction clearing price for less than 100% of the portfolio, running additional auctions, or delaying the Bidding Close Time. These governance arrangements continue to be clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of the ICC CDS Default Committee is clearly documented, and promote the effectiveness of ICC's risk management procedures by detailing the responsibilities of the ICC CDS Default Committee throughout the Auction Procedures, consistent with the requirements of Rule 17Ad-22(d)(8).¹²

Rule 17Ad-22(d)(11)¹³ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. ICC's default management rules and procedures contained in the ICC Rules, the Initial Default Auction Procedures, and the Secondary Auction Procedures are publically available on ICC's website. The proposed clarification and clean-up changes described above provide further specificity and transparency and thus enhance readability of the publically available Auction Procedures. Moreover, the proposed addition of All or Nothing Bidding and the automated DMS enhance ICC's ability to withstand defaults and

¹² 17 CFR 240.17Ad-22(d)(8).

¹³ 17 CFR 240.17Ad-22(d)(11).

continue providing clearing services, including by incentivizing competitive bidding to promote effective and efficient auctions that facilitate the close-out of the defaulter's portfolio and maximizing ICC's ability to efficiently and safely manage its auction process in default events, to ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default, consistent with the requirements of Rule 17Ad-22(d)(11).¹⁴

(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 ICC's Initial Default Auction Procedures and Secondary Auction Procedures will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes 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 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:

¹⁴ Id.

- (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-2019-011 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-2019-011. 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-2019-011 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.¹⁵

Jill M. Peterson
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).