

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-87958; File No. SR-ICC-2020-001)

January 14, 2020

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 Clearing Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4,<sup>2</sup> notice is hereby given that on January 9, 2020, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“SEC” or the “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 its Clearing Rules (the “Rules”)<sup>3</sup> to consider the possibility of ICC receiving proceeds from default insurance.

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

---

<sup>1</sup> 15 U.S.C. 78s(b)(1)

<sup>2</sup> 17 CFR 240.19b-4

<sup>3</sup> Capitalized terms used but not defined herein have the meanings specified in the Rules.

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 amendments to Chapters 1 and 8 of the ICC Rules as they relate to default insurance that is intended to cover specified losses resulting from a Clearing Participant ("CP") default. The proposed amendments consider the possibility of ICC receiving proceeds from default insurance, which would be applied as part of the resources available to ICC in the event of a CP default. Such default insurance would provide additional default resources to cover losses from CP defaults, prior to the need to use guaranty fund resources from non-defaulting CPs. ICC believes that 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 to update ICC Rule 102 to reference "Insurance Proceeds" which would be defined in Rule 802(b)(i)(A)(4).

ICC proposes to amend ICC Rule 802(a), which addresses the application of General Guaranty Fund contributions of a defaulting CP, to incorporate a reference to any insurer, surety or guarantor of the obligations of the defaulting CP to reflect that certain

recoveries from a defaulting CP may be owed to the insurance provider. ICC does not propose any changes to the order of priority set forth in ICC Rule 802(a).

ICC proposes changes to ICC Rule 802(b) to integrate default insurance into the default waterfall. ICC proposes to amend the default waterfall in Rule 802(b)(i) to include the proceeds of default insurance (if any) as a default resource, to be applied after the application of ICC's own guaranty fund contributions of \$50 million and prior to the application of guaranty fund contributions of non-defaulting CPs. Under proposed ICC Rule 802(b)(i)(A)(4), ICC defines Insurance Proceeds and clarifies that ICC has no obligation to obtain or maintain default insurance. ICC proposes to re-number the following clauses accordingly. Further, amended ICC Rule 802(b)(iii) provides that ICC may use the contributions of non-defaulting CPs to the guaranty fund (and assessments on such CPs) prior to the receipt of proceeds owed under the default insurance, provided that those CPs are reimbursed from the insurance proceeds when received.

ICC proposes changes to ICC Rule 802(c) to reflect that certain recoveries from or in respect of a defaulting CP may be owed to the insurance provider.

ICC proposes conforming changes to ICC Rule 808 that address Reduced Gains Distribution in order to permit Reduced Gains Distribution to occur prior to the end of the waiting period under the default insurance policy. Amended ICC Rule 808(b) clarifies that a claim under a default insurance policy will not preclude ICC from applying Reduced Gains Distribution after a CP default. Amended ICC Rule 808(m) provides that proceeds from a default insurance policy will be available as a potential resource to pay CPs that have been subject to Reduced Gains Distribution.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act<sup>4</sup> 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; 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)<sup>5</sup>, because ICC believes that the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, and 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. The proposed changes amend the default waterfall in ICC Rule 802(b)(i)(A) to include the proceeds of default insurance, if any, as a default resource, to be applied after the application of ICC's own guaranty fund contributions and prior to the application of guaranty fund contributions of non-defaulting CPs. Placing the proceeds from any default insurance that ICC may receive before the guaranty fund resources of non-defaulting CPs in the default waterfall is generally favorable to non-defaulting CPs

---

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> Id.

and enhances ICC's procedures that are designed to protect and ensure the safety of CP funds and assets. The default insurance provides additional default resources, after the exhaustion of the defaulting CP's margin and guaranty fund contributions and ICC's own guaranty fund contributions. In ICC's view, the proposed changes to the ICC Rules enhance ICC's ability to manage the risk of defaults by providing additional default resources to cover losses from CP defaults, prior to the need to use guaranty fund resources from non-defaulting CPs, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible. 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 and 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 within the meaning of Section 17A(b)(3)(F) of the Act.<sup>6</sup>

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad-22.<sup>7</sup> Rule 17Ad-22(b)(3)<sup>8</sup> requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. ICC believes that

---

<sup>6</sup> Id.

<sup>7</sup> 17 CFR 240.17Ad-22.

<sup>8</sup> 17 CFR 240.17Ad-22(b)(3).

the proposed revisions enhance its default waterfall and default management procedures. As described above, the proposed amendments contemplate the possibility of ICC receiving proceeds from default insurance, which would provide additional default resources to cover losses from CP defaults, prior to the need to use guaranty fund resources from non-defaulting CPs. Conforming changes are also proposed to ICC Rule 808 to permit Reduced Gains Distribution to occur prior to the end of the waiting period under the default insurance policy and to provide that proceeds from a default insurance policy will be available as a potential resource to pay CPs that have been subject to Reduced Gains Distribution. Such amendments consider the possibility of ICC receiving proceeds from default insurance, which, in ICC's view, represents a tool that strengthens ICC's ability to manage its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad-22(b)(3).<sup>9</sup>

Rule 17Ad-22(d)(11)<sup>10</sup> 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 changes to the ICC Rules integrate default insurance into the default waterfall, providing additional default resources to cover losses

---

<sup>9</sup> Id.

<sup>10</sup> 17 CFR 240.17Ad-22(d)(11).

from CP defaults, prior to the need to use guaranty fund resources from non-defaulting CPs. Amended ICC Rule 802(b)(iii) provides that ICC may use the contributions of non-defaulting CPs to the guaranty fund (and assessments on such CPs) prior to the receipt of proceeds owed under the default insurance, provided that those CPs are reimbursed from the insurance proceeds when received. Given that it can be relatively time consuming to make and process an insurance claim, this provision ensures that the existence of default insurance does not interfere with ICC's default management and allows ICC to continue its default management process without having to wait for the payment of insurance proceeds. Moreover, the proposed changes to ICC Rule 808 permit Reduced Gains Distribution to occur prior to the end of the waiting period under the default insurance policy. The proposed amendments thus 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).<sup>11</sup>

(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 ICC Rules 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.

---

<sup>11</sup> Id.

(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:

- (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](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2020-001 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-2020-001. 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-2020-001 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.<sup>12</sup>

J. Matthew DeLesDernier  
Assistant Secretary

---

<sup>12</sup> 17 CFR 200.30-3(a)(12).