

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88337; File No. SR-ICC-2020-001)

March 5, 2020

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to Revising the ICC Clearing Rules to Consider the Possibility of ICC Receiving Proceeds from Default Insurance

I. Introduction

On January 9, 2020, 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 thereunder,² a proposed rule change to revise its Clearing Rules (the “Rules”)³ to consider the possibility of ICC receiving proceeds from default insurance. The proposed rule change was published for comment in the Federal Register on January 21, 2020.⁴ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving 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.

⁴ 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; Exchange Act Release No. 87958 (Jan. 14, 2020); 85 Fed. Reg. 3446 (Jan. 21, 2020) (“Notice”).

II. Description of the Proposed Rule Change

The proposed rule change would amend Chapters 1 and 8 of the ICC Rules to allow ICC to receive proceeds from an insurance policy in the event of the default of a Clearing Participant (“CP”). The proposed rule change would incorporate these proceeds from insurance into ICC’s default waterfall and therefore treat them similar to other resources that ICC uses to cover losses from CP defaults, like the guaranty fund. In terms of incorporating insurance proceeds into ICC’s default waterfall, under the proposed rule change, generally ICC would use proceeds from insurance before using guaranty fund resources from non-defaulting CPs. Although the proposed rule change would establish the legal framework for ICC to maintain insurance and use insurance proceeds in the event of a CP’s default, the proposed rule change would not require that ICC maintain such insurance.

With respect to Chapter 1 of the ICC Rules, which sets out the defined terms used in the Rules, the proposed rule change would add to ICC Rule 102 (“Definitions”) the term “Insurance Proceeds” and would refer to proposed Rule 802(b)(i)(A)(4), where the term would be defined. Proposed Rule 802(b)(i)(A)(4) would define the term “Insurance Proceeds” to mean insurance proceeds, if any, received by ICC in connection with a CP’s default. Additionally, proposed Rule 802(b)(i)(A)(4) would state that ICC shall not be obligated to obtain or maintain any insurance policy with respect to the default of a CP, thus making explicit the point described above that the proposed rule change would not require that ICC maintain insurance against defaults.

With respect to Chapter 8 of the ICC Rules, the proposed rule change would first amend ICC Rule 802(a). ICC Rule 802(a) provides that ICC may charge against a defaulting CP’s contributions to the guaranty fund losses suffered from the CP’s default. Rule 802(a) lists the types of losses and expenses that ICC may charge against the defaulting CP’s contributions to

the guaranty fund, ordered by priority. Rule 802(a) also explains how ICC would pay out any surplus remaining after paying all of the other listed items. As explained in Rule 802(a), ICC may pay the surplus to ICC or to whomever may be lawfully entitled to receive the surplus, including any insurer, surety, or guarantor of the obligations of ICC. The proposed rule change would add to this any insurer, surety, or guarantor with respect to the obligations of the defaulting CP. This aspect of the proposed change would thus allow ICC to pay to an insurance provider surplus guaranty fund contributions of the defaulting CP, which ICC may be required to do under the terms of a policy insuring against losses resulting from the default of a CP.

The proposed rule change would next amend Rule 802(b) to integrate default insurance into ICC's default waterfall. Rule 802(b) gives ICC the right to charge against certain financial resources losses resulting from the default of a CP. Rule 802(b) lists the financial resources to which ICC may charge such losses, in the order by which ICC may use them. The proposed rule change would add to this list the insurance proceeds, if any, that ICC receives in connection with the CP's default. ICC would be able to use the insurance proceeds only after charging losses to ICC's contributions to the guaranty fund but before using the guaranty fund contributions of non-defaulting CPs.

Under ICC Rule 802(c), the defaulting CP remains liable for any losses charged in the manner permitted under Rule 802(b). As such, Rule 802(c) permits ICC to recover the liability from the defaulting CP's margin, collateral, or other assets, or by legal process. Rule 802(c) also requires that, should ICC make any such recovery, ICC must use the money recovered to pay back certain expenses and persons, according to the order listed in Rule 802(c). The proposed rule change would add to this list in Rule 802(c) an insurance provider, to the extent the provider is entitled to such recovery. Thus, this aspect of the proposed rule change would amend Rule

802(c) to reflect that ICC may owe money recovered from or in respect of a defaulting CP to the insurance provider and would allow ICC to pay back such insurance provider as necessary.

The proposed rule change would also make two specific changes to provide ICC flexibility to cover losses while waiting for payment under an insurance policy. First, the proposed rule change would amend Rule 802(b) to provide that ICC could use the guaranty fund contributions of non-defaulting CPs prior to receipt of any insurance proceeds. In that event, ICC would be required to reimburse the non-defaulting CPs from the insurance proceeds when received. Similarly, the proposed rule change would amend Rule 808 to allow ICC to conduct reduced gains distribution where ICC has made a claim under an insurance policy but has not yet received any proceeds from the claim. In that event, the proposed rule change would make any proceeds ultimately received under the insurance policy available as a potential resource to pay back CPs that have been subject to reduced gains distribution under Rule 808.

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.⁵ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁶ and Rule 17Ad-22(d)(11) thereunder.⁷

⁵ 15 U.S.C. 78s(b)(2)(C).

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 17 CFR 240.17Ad-22(d)(11).

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, and, in general, to protect investors and the public interest.⁸ As discussed above, the proposed rule change would establish the legal framework for the use of default insurance by amending ICC's default waterfall to provide for the use of such insurance and by allowing ICC to pay to the insurance provider, as necessary, surplus guaranty fund contributions of the defaulting CP and money recovered from the defaulting CP. The proposed rule change would also provide ICC with the ability to use other financial resources and to engage in reduced gains distribution while awaiting payment under a default insurance policy. Although the proposed rule change explicitly would not require that ICC obtain or maintain a default insurance policy, the Commission believes that in establishing the legal framework and operational flexibility for using such a default insurance policy, the proposed rule change would provide ICC a means of obtaining an additional financial resource (*i.e.* insurance) for offsetting losses resulting from a CP's default.

In doing so, the Commission believes that proposed rule change would enhance ICC's ability potentially to avoid the losses that could result from the default of a Clearing Participant. Because losses resulting from a CP's default could cause losses for ICC, disrupting ICC's ability to clear and settle securities transactions, the Commission believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions.

⁸ 15 U.S.C. 78q-1(b)(3)(F).

Moreover, because losses resulting from a CP's default could cause losses for ICC, disrupting ICC's access to securities and funds, the Commission believes the proposed rule change would help to assure the safeguarding of securities and funds in ICC's custody and control. Finally, for these reasons, the Commission believes that the proposed rule change would, in general, protect investors and the public interest.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICC's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.⁹

B. Consistency with Rule 17Ad-22(d)(11)

Rule 17Ad-22(d)(11) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of its default procedures publicly available and establish default procedures that 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.¹⁰ As discussed above, the Commission believes the proposed rule change, in establishing the legal framework and operational flexibility for using a default insurance policy, would provide ICC a means of obtaining an additional financial resource (*i.e.* insurance) for offsetting losses resulting from a CP's default. The Commission believes the proposed rule change would therefore help to ensure that ICC is able to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a CP's default by giving ICC the ability to obtain additional resources to offset losses resulting

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 15 U.S.C. 17Ad-22(d)(11).

from a CP's default. Therefore the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(d)(11).¹¹

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 Act¹² and Rule 17Ad-22(d)(11) thereunder.¹³

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁴ that the proposed rule change (SR-ICC-2020-001), be, and hereby is, approved.¹⁵

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 15 U.S.C. 17Ad-22(d)(11).

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 17 CFR 240.17Ad-22(d)(11).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 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).

¹⁶ 17 CFR 200.30-3(a)(12).