

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89072; File No. SR-ICC-2020-008)

June 16, 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 Exercise Procedures and ICC Clearing Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4,² notice is hereby given that on June 3, 2020, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (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 formalize the ICC Exercise Procedures in connection with the clearing of credit default index swaptions. ICC also proposes a related update to the ICC Clearing Rules (the “Rules”).³

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

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.

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 formalize the Exercise Procedures and to make a related change to the Rules in connection with its proposed launch of the clearing of credit default index swaptions (“Index Swaptions”). ICC has previously filed with the Commission changes to certain other policies and procedures related to the clearing of Index Swaptions on June 28, 2019⁴ and January 14, 2020⁵ (the “Swaption Rule Filings”). As set out in the Swaption Rule Filings, ICC intends to adopt certain related policies and procedures in preparation for the launch of clearing of Index Swaptions, including those set out in this filing, and does not intend to commence clearing of Index Swaptions until all such policies and procedures have been approved by the Commission or otherwise become effective. As such, ICC proposes to formalize the Exercise Procedures and make the related changes to the Rules effective following the approval of all such policies and procedures and the completion of the ICC governance process surrounding the Index Swaptions product expansion.

⁴ SEC Release No. 34-87297; File No. SR-ICC-2019-007 (Oct. 15, 2019) (approval), 84 Fed. Reg. 56270 (Oct. 21, 2019).

⁵ SEC Release No. 34-88047; File No. SR-ICC-2020-002 (Jan. 27, 2020) (notice), 85 Fed. Reg. 5756 (Jan. 31, 2020).

As discussed in the Swaption Rule Filings, 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 that would be cleared by ICC, the underlying index credit default swap would be limited to certain CDX and iTraxx Europe 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.

I. Exercise Procedures

The Exercise Procedures are intended to supplement the provisions of Subchapter 26R of the Rules⁶ 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 that ICC may take in the event of technical issues.

In paragraph 1 of the Exercise Procedures, ICC proposes to set out key definitions used for the exercise of Index Swaptions. Key defined terms would include the Exercise Period, which would be 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. The document would define the circumstances that constitute the failure of the Exercise System (“Exercise System Failure”) which is the electronic system established by ICC for exercise. The Exercising Party would mean (i) with respect to an

⁶ Subchapter 26R of the Rules was proposed in the Swaption Rule Filings. SEC Release No. 34-87297; File No. SR-ICC-2019-007 (Oct. 15, 2019) (approval), 84 Fed. Reg. 56270 (Oct. 21, 2019).

Index Swaption carried in the house account of a Participant as Swaption Buyer, such Participant, and (ii) with respect to an Index Swaption carried in the client origin account of a Participant for a Non-Participant Party as Swaption Buyer, such Non-Participant Party.

ICC proposes to describe the exercise and assignment process in paragraph 2 of the Exercise Procedures. In paragraph 2.1, ICC states that exercise notices would be delivered in accordance with the ICC Rules and the Exercise Procedures and specifically references Subchapter 26R of the Rules related to Index Swaptions.

Paragraph 2.2 of the proposed Exercise Procedures would address the procedures for exercise and assignment of Index Swaptions. The document sets forth ICC's process of netting all open positions in such expiring Index Swaption, which takes place on the business day prior to the expiration date of an Index Swaption and applies to house and client origin accounts. To exercise an Index Swaption, the Exercising Party would deliver an exercise notice to ICC during the Exercise Period specifying the notional amount being exercised ("Exercised Notional Amount"). ICC may also establish a Pre-Exercise Notification Period during which an Exercising Party may submit, modify, and/or withdraw preliminary exercise notices. The submission of an exercise notice during the Exercise Period will be irrevocable and binding on the Exercising Party and, once validated by ICC, will be accepted by ICC and binding on ICC and the Exercising Party (and, in the case of a Non-Participant Party, its Participant). If ICC rejects an exercise notice as not valid, as described in the Exercise Procedures, it will inform the submitting party, who may resubmit a corrected notice within the Exercise Period. For informational purposes only, within the Exercise Period, ICC may estimate and provide the notional

amount that it will assign to each open position in an Index Swaption of a Swaption Seller. Moreover, if an Exercising Party did not submit an exercise notice but submitted a preliminary exercise notice in respect of such Index Swaption that was not withdrawn, the Exercising Party will be deemed to have submitted an exercise notice with the Exercised Notional Amount specified under such preliminary notice. After the Exercise Period ends, ICC will determine final assignments to open positions in Index Swaptions of Swaption Sellers and notify Participants as described in the Exercise Procedures.

The proposed Exercise Procedures would address limitations and clarifications regarding the exercise process. Paragraph 2.3 sets out certain limitations, including limitations that ICC may impose during the Exercise Period and limitations as to the responsibility for any failure to exercise an Index Swaption. Paragraph 2.4 further clarifies the party that is entitled to exercise. A Participant is not entitled to provide a preliminary exercise notice or exercise notice on behalf of Non-Participant Parties for which it carries Index Swaptions. A Non-Participant Party will only be permitted to exercise an Index Swaption in a portfolio belonging to the Non-Participant Party. Additionally, under paragraph 2.4, a Participant may make certain elections as a result of a default or termination event with respect to a Non-Participant Party for which it carries an Index Swaption, and is required to obtain the agreement of each Non-Participant Party for which it carries an open position in Index Swaptions to the provisions of the Rules and Exercise Procedures applicable to Index Swaptions.

The proposed Exercise Procedures would describe the Exercise System and provide the steps that ICC would follow in case of technical issues. Paragraph 2.5 explains the Electronic Notice Process which is the process for the electronic delivery

and assignment of exercise notices or preliminary exercise notices through the Exercise System. Exercise notices would only be submitted through the Exercise System pursuant to the Electronic Notice Process, unless otherwise determined by ICC pursuant to paragraph 2.6. Namely, in the event of an Exercise System Failure affecting an Exercise Period, paragraph 2.6 provides ICC with the following options: (i) cancel and reschedule the Exercise Period, (ii) determine that automatic exercise will apply; and/or (iii) take such other action as ICC determines appropriate to permit Exercising Parties to submit exercise notices and to permit ICC to assign such notices. Paragraph 2.7 would address the situation where an Exercising Party is affected by a significant communications or information technology failure making it impossible or impractical to deliver all, or substantially all, of its exercise notices in accordance with the Electronic Notice Process during the Exercise Period (“Party Communication Failure”). Paragraph 2.8 would address the situation where Index Swaptions will be automatically exercised on the expiration date due to an Exercise System Failure.

II. Rule Amendments

ICC proposes to amend ICC Rule 304 related to offsets to incorporate a reference to the Exercise Procedures. Specifically, ICC proposes a change to ICC Rule 304(a) to clarify that netting of applicable offsetting positions in Index Swaptions would be subject to any provisions in the Exercise Procedures.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁷ and the regulations thereunder applicable to it, including the

⁷ 15 U.S.C. 78q-1.

applicable standards under Rule 17Ad-22.⁸ In particular, Section 17A(b)(3)(F) of the Act⁹ 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. The proposed rule change would formalize the Exercise Procedures, which describe the exercise and assignment process and are intended to supplement the provisions of Subchapter 26R of the Rules, to support the clearing of Index Swaptions. ICC sets out procedures in the document that are designed to protect users in the event of technical issues or technology failures, including circumstances where there is an Exercise System Failure and Party Communication Failure. The procedures allow firms to submit preliminary exercise notices such that the preliminary instructions can be used as the final exercise instructions in the event of a communications failure during the exercise window. The proposed rule change also proposes a related update to Rule 304(a) to clarify that netting of applicable offsetting positions in Index Swaptions would be subject to any provisions in the Exercise Procedures. Accordingly, in ICC's view, the proposed rule change will further ensure that ICC's Rules and policies and procedures clearly reflect the terms and conditions applicable to Index Swaptions and is thus consistent with 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

⁸ 17 CFR 240.17Ad-22.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

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.¹⁰

The amendments would also satisfy relevant requirements of Rule 17Ad-22.¹¹ Rule 17Ad-22(e)(1)¹² requires each covered clearing agency¹³ 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 are intended to supplement the provisions of Subchapter 26R of the Rules with respect to Index Swaptions and would further ensure that ICC's Rules clearly reflect the terms and conditions applicable to Index Swaptions. The proposed rule change would support the legal basis for the operation of the exercise and assignment process, including by defining key terms; describing the validation and rejection of exercise notices, including the party that is entitled to submit such notices; and addressing situations where there are technical issues. As such, the proposed rule change would satisfy the requirements of the Rule 17Ad-22(e)(1).¹⁴

¹⁰ Id.

¹¹ 17 CFR 240.17Ad-22.

¹² 17 CFR 240.17Ad-22(e)(1).

¹³ ICC will be a covered clearing agency subject to Rule 17ad-22(e) as of the effective date (July 13, 2020) as a result of the amended definition. 17 CFR 240.17Ad-22; Release No. 34-88616; File No. S7-23-16 (April 9, 2020), 85 Fed. Reg. 28853 (May 14, 2020).

¹⁴ 17 CFR 240.17Ad-22(e)(1).

Rule 17Ad-22(e)(17)¹⁵ 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 proposed rule change would 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, which would allow ICC to identify plausible sources of operational risks in clearing Index Swaptions and minimize their impact through appropriate systems, policies, procedures, and controls. To reduce operational risk, the document includes procedures for validating and rejecting exercise notices and procedures for exercise in the event of technical issues or technology failures, including an Exercise System Failure and a Party Communication Failure. Such procedures are designed to provide sound alternatives in the case of technical issues and help mitigate the impact from technical issues to ensure that the system has a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. The proposed rule change is therefore reasonably designed to meet the requirements of Rule 17Ad-22(e)(17).¹⁶

¹⁵ 17 CFR 240.17Ad-22(e)(17)(i)-(ii).

¹⁶ Id.

Rule 17Ad-22(e)(18)¹⁷ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis. The publically available Rules and the Exercise Procedures, which would be publically available, would establish objective, risk-based, and publicly disclosed criteria for participation in ICC's exercise and assignment process. As discussed above, the Exercise Procedures would provide further detail as to the manner in which Index Swaptions may be exercised by Swaption Buyers and the manner in which ICC will assign such exercises to Swaption Sellers. The document would also specify the party entitled to exercise, stating that a Non-Participant Party will only be permitted to exercise an Index Swaption in a portfolio belonging to the Non-Participant Party. The amendments to the Rules further incorporate reference to the Exercise Procedures into Rule 304(a). Additionally, the proposed rule change would require a Participant to obtain the agreement of each Non-Participant Party for which it carries an open position in Index Swaptions to the provisions of the Rules and Exercise Procedures applicable to Index Swaptions, which are intended to ensure that participants have sufficient financial resources and robust operational capacity to meet obligations arising from participation in

¹⁷ 17 CFR 240.17Ad-22(e)(18).

the clearing agency. Thus, the proposed rule change would satisfy the requirements of Rule 17Ad-22(e)(18).¹⁸

(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 not necessary or appropriate in furtherance of the purpose of the Act. The proposed rule change would support the clearing of Index Swaptions, including by formalizing the Exercise Procedures and making a related Rule change necessary to support the clearing of Index Swaptions. The proposed rule change will apply uniformly across all market participants. ICC does not believe acceptance of Index Swaptions for clearing would adversely affect the trading markets for such contracts, and in fact acceptance of such contracts by ICC would provide market participants with the additional flexibility to have their Index Swaptions cleared. Acceptance of Index Swaptions for clearing will not, in ICC's view, adversely affect clearing of any other currently cleared product. ICC does not believe the amendments would adversely affect the ability of Participants, their customers or other market participants to continue to clear contracts, including CDS Contracts. ICC also does not believe the enhancements would adversely affect the cost of clearing or otherwise limit market participants' choices for selecting clearing services in Index Swaptions, credit default swaps or other products. Accordingly, ICC does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

¹⁸ 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. Please include File Number SR-ICC-2020-008 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-2020-008. 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-2020-008 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.¹⁹

J. Matthew DeLesDernier
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).