

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90299; File No. SR-ICC-2020-012)

October 30, 2020

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to ICC's Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4,² notice is hereby given that on October 23, 2020, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. ICC filed the proposed rule change pursuant Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to implement clearing fees for credit default index swaptions ("Index Swaptions") in connection with the launch of the clearing of Index Swaptions.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. 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

(a) Purpose

The proposed changes are intended to implement clearing fees for Index Swaptions in connection with the launch of the clearing of Index Swaptions. ICC has previously filed with the Commission changes to certain other policies and procedures related to clearing Index Swaptions (the "Swaption Rule Filings").⁵ 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

⁵ As set out in the Swaption Rule Filings, ICC intends to implement the changes described in the Swaption Rule Filings following completion of the ICC governance process surrounding the Index Swaptions product expansion. SEC Release No. 34-87297 (October 15, 2019) (approval), 84 Fed. Reg. 56270 (October 21, 2019) (SR-ICC-2019-007); SEC Release No. 34-89142 (June 24, 2020) (approval), 85 Fed. Reg. 39226 (June 30, 2020) (SR-ICC-2020-002); SEC Release No. 34-89436 (July 31, 2020) (approval), 85 Fed. Reg. 47827 (August 6, 2020) (SR-ICC-2020-008); SEC Release No. 34-89948 (September 22, 2020) (approval), 85 Fed. Reg. 60845 (September 28, 2020) (SR-ICC-2020-010).

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.⁶ The proposed changes are set forth in Exhibit 5 hereto [sic], and described in detail as follows.

ICC maintains a Clearing Participant (“CP”) fee schedule⁷ and client fee schedule⁸ (collectively, the “fee schedule”) that are publicly available on its website, which ICC proposes to update in connection with the clearing of Index Swaptions. Specifically, ICC proposes to update the fee schedule to establish clearing fees for Index Swaptions, which are intended to come into effect upon the launch of clearing of Index Swaptions, subject to the completion of the ICC governance process surrounding the Index Swaptions product expansion and any regulatory review or approval process. Currently, clearing fees for single name and index credit default swap (“CDS”) contracts are due by CPs and clients in accordance with the product, amount and currency set out in the fee schedule. ICC proposes to incorporate clearing fees for Index Swaptions into the fee schedule, which would similarly be due by CPs and clients in accordance with the

⁶ Index Swaptions are also referred to herein and in the Swaption Rule Filings as “index options” or “index CDS options”, or in similar terms.

⁷ CP fee details available at: https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees_Clearing_Participant.pdf.

⁸ Client fee details available at: https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees.pdf. As specified, all fees are charged directly to a client’s CP.

product, amount and currency set out in the fee schedule. Specifically, Index Swaption fees (per million) for CPs would be \$3 for North American and Sovereign products and €3 for European products, and for clients would be \$4 for USD denominated products and €4 for EUR denominated products.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of the Act, including Section 17A of the Act⁹ and the regulations thereunder applicable to it. More specifically, the proposed rule change establishes or changes a member due, fee or other charge imposed by ICC under Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder. ICC believes 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 17A(b)(3)(D),¹² which requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

ICC believes that the fees for Index Swaptions have been set at an appropriate level and provide market participants with the additional flexibility to have their Index Swaptions cleared as ICC continues to develop, maintain and provide safe and efficient clearing services to the market. In ICC's view, the fees are reasonable as they correspond

⁹ 15 U.S.C. 78q-1.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 15 U.S.C. 78q-1(b)(3)(D).

with the costs and expenses to ICC in offering clearing of Index Swaptions, including the investment ICC has made with respect to clearing such products (e.g., technology and development), and they consider current market activity as well as anticipated market activity with respect to clearing Index Swaptions at ICC. Namely, in determining the appropriate level, ICC discussed the proposed fees with market participants and its Board (who approved the fees) and took into account factors such as anticipated volume, revenue, expenses, and market participation in this clearing service, including based on different fee levels. More specifically, Index Swaption fees would be slightly less than index fees (per million) and are designed to encourage market participation in this clearing service while properly compensating ICC for the risks, costs and expenses of clearing Index Swaptions. Client fees would be higher than CP fees for Index Swaptions, which is in line with ICC's current single name and index fees, given the responsibilities and obligations of CPs to ICC as opposed to clients. Accordingly, the proposed fees appropriately balance the costs of clearing and expenses incurred by ICC and provide a reasonable fee structure for market participants.

Moreover, the fees for Index Swaptions will apply equally to all market participants clearing Index Swaptions and therefore the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among participants, within the meaning of Section 17A(b)(3)(D) of the Act.¹³ ICC therefore believes that the proposed rule change is consistent with the requirements of Section 17A of the Act¹⁴ and

¹³ Id.

¹⁴ 15 U.S.C. 78q-1.

the regulations thereunder applicable to it and is appropriately filed pursuant to Section 19(b)(3)(A) of the Act¹⁵ and paragraph (f)(2) of Rule 19b-4¹⁶ thereunder.

(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. As discussed above, the proposed changes incorporate reasonable clearing fees for Index Swaptions into ICC's fee schedule and will apply uniformly across all market participants. The implementation of such changes does not preclude other market participants from offering such instruments for clearing. Moreover, ICC does not believe that the amendments would adversely affect the ability of market participants to access clearing services. Accordingly, ICC does not believe the amendments impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change 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 and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ thereunder. At any time within 60 days of

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(2).

the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2020-012 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-2020-012. 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 that are filed with the Commission, and all written communications relating to the proposed rule

change 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-2020-012 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

Jill M. Peterson,
Assistant Secretary.

¹⁹ 17 CFR 200.30-3(a)(12).