

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93690; File No. SR-ICC-2021-023)

December 1, 2021

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Clearing Rules and ICC Exercise Procedures

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 November 19, 2021, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. 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 revise the ICC Clearing Rules (“Rules”) and Exercise Procedures³ in connection with the clearing of credit default index Swaptions (“Index Swaptions”).⁴

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 and Exercise Procedures.

⁴ Index Swaptions are also referred to in ICC’s policies and procedures as “index options” or “index CDS options”, or in similar terms.

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, 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

(a) Purpose

ICC proposes revising the ICC Rules and Exercise Procedures related to the clearing of Index Swaptions.⁵ The proposed changes to the ICC Rules and Exercise Procedures enhance the restructuring component of iTraxx Index Swaptions and include other clarifications or updates, including with respect to fallback measures in the Exercise Procedures. ICC proposes to make the changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

⁵ 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 cleared by ICC, the underlying index credit default swap is limited to certain CDX and iTraxx 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. Rule Amendments

The proposed amendments revise Rule 26R-319, which addresses procedures for settlement of an exercised Index Swaption. ICC proposes clarifications to Rule 26R-319(b), under which additional settlements may be required. The proposed changes add a parenthetical with an exception and specify that clause (i) regarding the settlement of amounts owed is subject to any modification with respect to fixed rate payments or accrual rebates as specified by ICC Circular.

ICC proposes to revise Rule 26R-319(c) to amend the restructuring component of iTraxx Index Swaptions. Currently, the iTraxx Index Swaption delivers a single name position in addition to the re-versioned underlying index. For bilateral iTraxx Index Swaptions, counterparties to Index Swaption contracts on the restructured single name decide what the Index Swaption will deliver in the future if exercised/assigned: single name physical position, buyer triggered auction cash payment, or seller triggered auction cash payment. Following the changes, the cleared iTraxx Index Swaption would deliver a blend of all three outcomes such that the cleared instrument would more closely replicate the payout of the bilateral instrument.

Namely, under the amendments, the blended deliverables apply for iTraxx Index Swaption expiries on or after the auction settlement date, such that the Index Swaption delivers a re-versioned underlying index plus a blend of cash payment and single name. In subsection (c), ICC proposes minor updates in introducing Existing Restructuring as a defined term. Clause (ii) continues to discuss the Underlying New Trade that comes into

effect⁶ and includes a reference to new clause (v). Clause (iii) would be amended and divided into two clauses. Amended clause (iii) discusses the treatment of the Underlying New Trade described in clause (ii) if the expiration date occurs prior to commencement of the CEN Triggering Period (as defined in the Restructuring Procedures)⁷ for the Existing Restructuring. New clause (iv) discusses the treatment of the Underlying New Trade described in clause (ii) if the expiration date occurs on or following the commencement of such period but prior to the auction settlement date.

Proposed clause (v) sets out the framework for the blended deliverables and would be applicable if the expiration date occurs on or following the auction settlement date. The proposed language requires ICC to (1) determine the extent to which positions in relevant single name contracts of the relevant tenor referencing the reference entity subject to the Existing Restructuring are settled; (2) determine, if applicable, a cash settlement amount with respect to the corresponding portion of the notional amount of the Index Swaption applicable to such reference entity; and (3) with respect to the remaining portion of such notional amount, an Underlying New Trade to come into effect. Additional specifications with respect to the Underlying New Trade and a reference to the Exercise Procedures or other applicable procedures are included.

⁶ An Underlying New Trade remains defined in Rule 26R-102 as a new single name CDS trade that would arise upon exercise of an Index Swaption where a relevant Restructuring Credit Event, if applicable, has occurred with respect to a reference entity in the relevant index.

⁷ ICC Restructuring Procedures available at: https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Restructuring_Procedures.pdf.

II. Exercise Procedures Amendments

The Exercise Procedures supplement the provisions of Subchapter 26R of the Rules with respect to Index Swaptions. The proposed amendments define Minimum Intrinsic Value in paragraph 1 as a minimum intrinsic value below which an Index Swaption position would not be identified as “in the money” for paragraph 2.2(e)(ii) or 2.8. ICC may establish a Minimum Intrinsic Value and/or permit an exercising party to specify a Minimum Intrinsic Value for its Index Swaptions for a relevant pre-exercise notification period or exercise period. ICC would incorporate this term in respect of fallback provisions described in paragraphs 2.2(e)(ii) and 2.8. Specifically, ICC would take into account any applicable Minimum Intrinsic Value as part of its procedures for the pre-exercise notification period (during which preliminary exercise notices can be submitted, modified, and/or withdrawn) in paragraph 2.2(e)(ii) and for automatic exercise in paragraph 2.8. The proposed changes further specify that an “in the money” determination will be based on intrinsic value. In general, if intrinsic value is greater than the Minimum Intrinsic Value, the position will be exercised.

ICC proposes paragraph 3, which would apply in connection with Rule 26R-319(c)(v) where an Existing Restructuring has occurred with respect to a reference entity underlying an exercised Index Swaption and the Index Swaption expiration date occurs on or following the auction settlement date. Paragraph 3 provisions may be modified or supplemented pursuant to ICC Circular, as specified in paragraph 3.1.

Paragraph 3.2 would set out the determination of settled portions. The proposed changes define Relevant CDS Transactions as single name contracts in the relevant reference entity cleared at ICC and such others as ICC may specify by Circular. ICC

would determine the portion of the aggregate notional amount of Relevant CDS Transactions for which an eligible party timely delivered a credit event notice (“Triggered Portion”) and the portion as to which no such notice was timely delivered (“Untriggered Portion”). With respect to the Triggered Portion, paragraph 3.2 defines the Buyer and Seller Triggered Portions as the portions for which the protection buyer or seller delivered certain notices (i.e., prevailing credit event notice, prevailing notice to exercise movement option). The portion for which a movement option was applicable but for which neither protection buyer nor seller delivered a notice to exercise would be the Unmoved Portion, and together with the Untriggered Portion, the Untriggered/Unmoved Portion. ICC may establish by Circular a threshold pertaining to the Untriggered/Unmoved Portion under paragraph 3.2. This paragraph also sets out how the Buyer Triggered, Seller Triggered and Untriggered/Unmoved Portions are defined as percentages, namely the Buyer Triggered, Seller Triggered, and Untriggered/Unmoved Percentages.

Paragraph 3.3 would discuss settlement in respect of an exercised Index Swaption to which Rule 26R-319(c)(v) applies. Subsection (a) sets forth ICC’s determination of the cash settlement amount owed pursuant to Rule 26R-319(c)(v)(2). ICC would sum the settlement amounts in cash applicable to the Buyer and Seller Triggered Portions, which would be calculated based on the Relevant Notional Amount (i.e., the notional amount under the Index Swaption applicable to such reference entity) multiplied by the Buyer and Seller Triggered Percentages. The cash settlement amount may be adjusted to take into account applicable fixed payments and accrual rebates as specified by ICC Circular. Under subsection (b), the notional amount of the Underlying New Trade established

under Rule 26R-319(c)(ii) and (v)(3) would be the Relevant Notional Amount multiplied by the Untriggered/Unmoved Percentage.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁸ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.⁹ In particular, Section 17A(b)(3)(F) of the Act¹⁰ 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. ICC proposes changes to the Rules and Exercise Procedures to support the clearing of Index Swaptions, including to amend the restructuring component of iTraxx Index Swaptions. Currently, the iTraxx Index Swaption delivers a single name position in addition to the re-versioned underlying index. Under the amendments, the blended deliverables apply for iTraxx Index Swaption expiries on or after the auction settlement date, such that the Index Swaption delivers a re-versioned underlying index plus a blend of cash payment and single name. These changes enhance the restructuring component such that the cleared instrument more closely replicates the payout of bilateral instruments, which would provide additional consistency to market participants. The

⁸ 15 U.S.C. 78q-1.

⁹ 17 CFR 240.17Ad-22.

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

additional clarifications or updates ensure that the Rules and Exercise Procedures remain effective, clear, and up-to-date. The changes clearly identify where ICC may modify or supplement procedures by Circular. The amended Exercise Procedures incorporate Minimum Intrinsic Value in respect of fallback provisions in paragraphs 2.2(e)(ii) and 2.8. ICC believes that defining this value would enhance the procedures to ensure that ICC's cleared Index Swaptions are appropriately exercised. Moreover, the changes continue to specify ICC's role in identifying "in the money" positions, taking into account Minimum Intrinsic Value, to ensure that the processes associated with the pre-exercise notification period and automatic exercise operate reliably. In ICC's view, the proposed rule change will 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 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.¹¹

The amendments would also satisfy relevant requirements of Rule 17Ad-22.¹² Rule 17Ad-22(e)(1)¹³ requires each covered clearing agency 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

¹¹ Id.

¹² 17 CFR 240.17Ad-22.

¹³ 17 CFR 240.17Ad-22(e)(1).

activities in all relevant jurisdictions. The proposed changes support the clearing of Index Swaptions by ICC, including by enhancing the restructuring component of iTraxx Index Swaptions and making other clarifications or updates, to ensure that the Rules and Exercise Procedures clearly and accurately reflect the requirements and procedures applicable to iTraxx Index Swaptions and Index Swaptions more generally. Moreover, the changes to the Rules and Exercise Procedures clearly identify where ICC may modify or supplement procedures by Circular. The proposed rule change would thus continue to support the legal basis for ICC's clearance of Index Swaptions and operation of the exercise and assignment process. As such, the proposed rule change would satisfy the requirements of the Rule 17Ad-22(e)(1).¹⁴

Rule 17Ad-22(e)(10)¹⁵ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries. The Rules continue to clearly set out the procedures for settlement of Index Swaptions on exercise. Under the amendments, the blended deliverables apply for iTraxx Index Swaption expiries on or after the auction settlement date, such that the Index Swaption delivers a re-versioned underlying index plus a blend of cash payment and single name. Moreover, the amended Exercise Procedures clearly set out procedures associated with

¹⁴ Id.

¹⁵ 17 CFR 240.17Ad-22(e)(10).

the determination of the cash settlement amount owed pursuant to Rule 26R-319(c)(v)(2) and the notional amount of the Underlying New Trade established under Rule 26R-319(c)(ii) and (v)(3). In ICC's view, the Rules and Exercise Procedures continue to enable ICC to identify and manage the risks of settlement of Index Swaptions on exercise. As such, the amendments would satisfy the requirements of Rule 17Ad-22(e)(10).¹⁶

Rule 17Ad-22(e)(17)¹⁷ 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 enhanced restructuring component in Rule 26R-319 would avoid introducing unnecessary complexity or operational risk, as the iTraxx Index Swaption would deliver a re-versioned underlying index plus a blend of cash payment and single name, and proposed paragraph 3 of the Exercise Procedures would further set out associated procedures. Moreover, the Exercise Procedures 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 and including fallback measures, which help mitigate the impact from operational or technical issues and ensure

¹⁶ Id.

¹⁷ 17 CFR 240.17Ad-22(e)(17)(i) and(ii).

that the system has a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. The amendments to the Exercise Procedures add clarity by specifying a minimum intrinsic value below which an Index Swaption position would not be identified as “in the money” in respect the pre-exercise notification period and automatic exercise and would further ensure that the processes associated with these fallback measures operate reliably. ICC’s procedures continue to be designed to 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).¹⁸

(B) Clearing Agency’s Statement on Burden on Competition

ICC does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The proposed changes to the ICC Rules and Exercise Procedures will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes 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.

¹⁸ Id.

III. Date of Effectiveness of the Proposed Rule Change 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 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-2021-023 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-2021-023. 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-2021-023 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).