

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97318; File No. SR-ICC-2023-004)

April 17, 2023

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to Clearance of Additional Credit Default Swap Contracts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹, 15 U.S.C. 78s(b)(1)² and Rule 19b-4³, 17 CFR 240.19b-4, notice is hereby given that on April 3, 2023, 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 primarily prepared 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 change is for ICC to provide for the clearance of Standard Subordinated European Insurance Corporate Single Name CDS contracts (“STSEIC Contracts”).

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

¹ 15 U.S.C. 78s(b)(1).

² Id.

³ Id.

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 purpose of the proposed rule change is to adopt rules that will provide the basis for ICC to clear additional credit default swap contracts (“CDS”). Specifically, ICC proposes amending Chapter 26⁴ of the ICC Rules to add Subchapter 26S to provide for the clearance of STSEIC Contracts. ICC believes the addition of these contracts will benefit the market for CDS by providing market participants the benefits of clearing, including the reduction in counterparty risk, and safeguarding of margin assets pursuant to clearing house rules. The clearing of STSEIC Contracts will not require any changes to ICC’s Risk Management Framework or other policies and procedures constituting rules within the meaning of the Securities Exchange Act of 1934 (“Act”).⁵

Rule Amendments

STSEIC Contracts have similar terms to Standard European Corporate Single Name CDS contracts (“STEC Contracts”) currently cleared by ICC and governed by Subchapter 26G of the ICC Rules. Accordingly, the proposed rules found in Subchapter 26S largely mirror the ICC Rules for STEC Contracts in Subchapter 26G, with certain

⁴ Chapter 26 of the ICC Rules covers the CDS products cleared by ICC, with each subchapter of Chapter 26 defining the characteristics and additional Rules applicable to the various specific categories of CDS contracts cleared by ICC (e.g., Standard European Corporate Single Names and Standard North American Corporate Single Names).

⁵ 15 U.S.C. 78q-1

modifications that reflect differences in terms and market conventions between STEC Contracts and STSEIC Contracts. STSEIC contracts will be denominated in Euro.

In new Subchapter 26S, Rule 26S-102 (Definitions) sets forth the definitions used for STSEIC Contracts. Except as noted below, the definitions are substantially the same as the definitions found in Subchapter 26G, other than the category of contract to be cleared. The definitions section in Subchapter 26S does not contain a definition analogous to “Eligible STEC Sector” that appears in Subchapter 26G as, unlike STEC Contracts, there are no further subsectors for STSEIC Contracts as these contracts are essentially already at a sub-sector level and therefore a definition for further sub-sectors is not necessary. Furthermore, Subchapter 26S does not contain several provisions on restructuring that are found in Subchapter 26G. The reason such provisions are not needed in Subchapter 26S is that the market convention for STSEIC Contracts (as set out in the ISDA Physical Settlement Matrix) is that Modified Modified Restructuring (aka “M(M)R Restructuring”) does not apply. This differs from the STEC Contract category and therefore various provisions that relate to M(M)R Restructuring that are included in Subchapter 26G are not applicable for STSEIC Contracts and therefore are not included in proposed Subchapter 26S. In addition, Subchapter 26G includes several references to “2003-Type CDS Contracts” which are not included in proposed Subchapter 26S as it is not anticipated that any cleared STSEIC Contracts will reference the older 2003 ISDA Credit Derivatives Definitions and as a result those provision related to the 2003 ISDA Credit Derivatives Definitions have not been included. ICC Rules 26S-203 (Restrictions on Activity), 26S-206 (Notices Required of Participants with respect to STSEIC Contracts), 26S-303 (STSEIC Contract Adjustments), 26S-309 (Acceptance of STSEIC

Contracts by ICE Clear Credit), 26S-315 (Terms of the Cleared STSEIC Contract, 26S-316 (Relevant Physical Settlement Matrix Updates), 26S-502 (Specified Actions), and 26S-616 (Contract Modifications) reflect or incorporate the basic contract specifications for STSEIC Contracts and are substantially the same as under Subchapter 26G of the ICC Rules. Under 26S-315(f) the Subordinated European Insurance Terms are deemed to apply to the STSEIC Contracts as such terms are part of the market-standard provisions that apply under the 2014 ISDA Credit Derivatives Definitions. Furthermore, 26S-616 is slightly different from the analogous provision under Subchapter 26G (i.e., 26G-616) as the NTCE Supplement⁶ referenced in Rule 26G-616(c) was adopted while ICC had open interest in STEC Contracts and therefore Rule 26G-616 was amended to incorporate the NTCE Supplement into then currently open STEC Contract positions.⁷ For new cleared contracts such as STSEIC Contracts under Subchapter 26S, such specific reference to the NTCE Supplement is not necessary as such supplement is part of the 2014 ISDA Credit Derivatives Definitions and therefore will automatically apply to STSEIC Contracts under the current ISDA Physical Settlement Matrix.

(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

⁶ The 2019 Narrowly Tailored Credit Event Supplement to the 2014 ISDA Credit Derivatives Definitions published by ISDA (the “NTCE Supplement”).

⁷ See SEC Release No. 34-87612 (December 2, 2019) (notice), 85 Fed. Reg. 3724 (January 22, 2020) (SR-ICC-2019-013).

⁸ 15 U.S.C. 78q-1.

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. As described above, the STSEIC Contracts proposed for clearing are similar to contracts currently cleared by ICC and will be cleared pursuant to ICC's existing clearing arrangements and related financial safeguards, protections and risk management procedures. Clearing of the STSEIC Contracts will allow market participants an increased ability to manage risk and ensure the safeguarding of margin assets pursuant to ICC Rules. ICC believes that acceptance of the STSEIC Contracts, on the terms and conditions set out in the ICC Rules, is consistent with the prompt and accurate clearing and settlement of the contracts 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, within the meaning of Section 17A(b)(3)(F) of the Act.¹¹

Clearing of the STSEIC Contracts also will satisfy the relevant requirements of Rule 17Ad-22.¹² In particular, in terms of financial resources, ICC will apply its existing initial margin methodology to the clearing of the additional contracts. ICC believes this

⁹ 17 CFR 240.17Ad-22.

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ Id.

¹² 17 CFR 240.17Ad-22.

model will provide sufficient initial margin to cover its credit exposure to its clearing members commensurate with the risks and particular attributes from clearing such contracts, consistent with the requirements of Rule 17Ad-22(e)(6).¹³ In addition, ICC believes its guaranty fund, under its existing methodology, will together with the required initial margin, provide sufficient financial resources to support the clearing of the additional contracts consistent with the requirements of Rule 17Ad-22(e)(4).¹⁴ ICC also believes that its existing operational systems, policies, procedures and controls are sufficient for clearing the additional contracts, consistent with the requirements of Rule 17Ad-22(e)(17),¹⁵ as the new contracts are substantially the same from an operational perspective as existing contracts and ICC will use existing settlement procedures and account structures for the new contracts. ICC determined to accept STSEIC Contracts for clearing in accordance with its governance process, which included review of the contracts and related risk management considerations by the ICC Risk Committee and

¹³ 17 CFR 240.17Ad-22(e)(6), which requires covered clearing agency policies and procedures to cover its credit exposures to its participants by establishing a risk-based margin system.

¹⁴ 17 CFR 240.17Ad-22(e)(4), which requires covered clearing agency policies and procedures to effectively identify, measure, monitor and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes.

¹⁵ 17 CFR 240.17Ad-22(e)(17), which requires covered clearing agency policies and procedures to manage its operational risks.

approval by the Board. These governance arrangements are consistent with the requirements of Rule 17Ad-22(e)(2).¹⁶

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

The STSEIC Contracts will be available to all ICC participants for clearing. The clearing of STSEIC Contracts by ICC does not preclude the offering of the STSEIC Contracts for clearing by other market participants. Accordingly, ICC does not believe that clearance of the STSEIC Contracts will have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act¹⁷.

(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

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

¹⁶ 17 CFR 240.17Ad-22(e)(2), which requires covered clearing agency policies and procedures to provide for governance arrangements which, among other things, are clear and transparent and prioritize the safety and efficiency of the covered clearing agency.

¹⁷ 15 U.S.C. 78q-1.

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 Act¹⁸. 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-2023-004 on the subject line.

- Paper Comments:

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICC-2023-004. 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

¹⁸ Id.

(<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 Section, 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-2023-004 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

Sherry R. Haywood
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).