

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97840; File No. SR-ICC-2023-009)

July 5, 2023

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Default Auction Procedures—Initial Default Auctions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4,² notice is hereby given that on June 22, 2023, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“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

ICE Clear Credit LLC (“ICC”) proposes revisions to ICC’s Default Auction Procedures—Initial Default Auctions (the “Auction Procedures”). These revisions do not require any changes 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

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 17 CFR 240.19b-4.

³ Capitalized terms used but not defined herein have the meanings specified in the Rules.

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 to revise its Auction Procedures. In the event of the default of an ICC Clearing Participant ("CP"), the Auction Procedures are designed to facilitate liquidation of the defaulter's portfolio through a multi-lot modified Dutch auction. ICC believes the proposed revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

The purpose of the proposed amendments is to incorporate feedback received from market participants during ICC's 2022 default test to revise the Auction Procedures to provide ICC greater flexibility to determine that a minimum bid requirement is not appropriate for an auction participant in certain circumstances and/or to decide for a particular auction lot that so-called "juniorization" of participants' guaranty fund contributions based on competitiveness of bidding is not appropriate. With respect to the minimum bid requirement, market participants expressed concern that certain market participants may not trade, or have the operational, risk management or other capacity to trade or otherwise manage, particular products cleared through ICC (e.g., index swaptions). If a participant were forced to bid for lots including such products, the participant might acquire in the default auction products for which it may not have the

ready capability to manage the risk of its positions. Forcing participants to acquire such positions may result in an increase in systemic risk. Similarly, market participants have expressed concerns that while juniorization may in general incentivize robust bidding in the auction process, there may be particular situations where, in the light of the characteristics of the lot and participants involved in the auction, the risk of juniorization could make it more difficult to auction the lot successfully or might otherwise be undesirable or inappropriate for the auction.

To address these concerns, ICC proposes the following amendments to the Auction Procedures. Currently, under Section 2.4 of the Auction Procedures, all non-defaulting CPs and Direct Participating Customers⁴ (collectively, “Auction Participants”) are required to bid for a minimum notional amount of contracts for each auction lot determined pro rata based on its required contribution to the ICC guaranty fund (“Minimum Bid Requirement”), subject to certain exceptions. ICC proposes to amend Section 2.4 to provide an additional exception to the extent ICC determines that the Minimum Bid Requirement would be inappropriate for certain Auction Participant(s) in light of: (i) the operational and other capabilities of such Auction Participant(s) to clear contracts in the relevant auction lot, or (ii) the conditions in the market for the contracts in the relevant auction lot. These amendments would allow ICC to determine that a Minimum Bid Requirement should not apply, among other cases, where the relevant Auction Participant does not have risk management or other operational capabilities to clear the relevant contracts. It also provides ICC with flexibility to eliminate a Minimum

⁴ A Direct Participating Customer is a customer of a CP that has been authorized to participate in an ICC default auction pursuant to the requirements set out in the Auction Procedures.

Bid Requirement in other circumstances it determines to be appropriate, to address market conditions and other circumstances that may be prevailing at the time.

Furthermore, ICC proposes amending Section 2.6 of the Auction Procedures to allow ICC to determine that for a particular auction lot, all Auction Participants will be treated as Senior Bidders in circumstances where ICC determines that “juniorization” may negatively impact ICC’s ability to conduct a successful default auction given the then current market conditions. The effect of such a determination would be that “juniorization” of Lot Guaranty Fund Contributions and Lot Assessment Contributions will not occur, such that all such contributions will be applied on a pro rata basis rather than based on the relative competitiveness of bids made. ICC believes this flexibility is appropriate to address potential scenarios where juniorization may make it more difficult to run a successful auction or is otherwise inappropriate or undesirable for the auction in light of the particular circumstances at the time.

In addition, ICC received feedback from market participants during ICC’s 2022 default test that making the foregoing revisions to ICC’s Auction Procedures would better align such procedures with the default procedures of other clearing houses (e.g., LCH Ltd, LCH SA, and Eurex). According to such market participants, the foregoing clearing houses have rules and/or default procedures that, in general, exclude non-defaulting clearing members from mandatory participation in default auctions where such non-defaulting clearing members do not have exposure to the products in the default auction portfolio.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act⁵ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; in general, to protect investors and the public interest; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that 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 17(A)(b)(3)(F)⁶, because ICC believes that the proposed changes to the Auction Procedures enhance ICC's ability to conduct a default auction in a manner that mitigates risk to Auction Participants. The proposed changes introduce additional options to ICC to disapply minimum bid requirements for certain Auction Participants and/or juniorization for certain auction lots in circumstances where such practices might otherwise lead to an increase in systemic risk or be inappropriate or undesirable in light of ICC's goal of running a successful auction. Such changes would maintain the incentives for competitive bidding in a default auction as Auction Participants are still incentivized to protect their guaranty fund deposits and assessment contributions, and juniorization would be expected to continue to apply in most circumstances. Such changes overall are designed to promote effective and efficient auctions to facilitate the close-out of the defaulter's portfolio, in light of feedback from

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ *Id.*

market participants. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.⁷

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad-22.⁸ Rule 17Ad-22(e)(4)(ii)⁹ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. ICC believes that the proposed revisions enhance its Auction Procedures. As described above, the proposed changes to the Auction Procedures enhance ICC's ability to conduct a default auction in a manner that mitigates risk to Auction Participants. The proposed changes introduce additional options to ICC to disapply minimum bid requirements for certain Auction Participants and/or juniorization for certain auction lots in circumstances where such practices may lead to an increase in risk or may otherwise be undesirable. Such changes promote effective and efficient auctions to facilitate the close-out of the defaulter's portfolio. In ICC's view, these changes represent options that strengthen ICC's ability to

⁷ *Id.*

⁸ 17 CFR 240.17Ad-22.

⁹ 17 CFR 240.17Ad-22(e)(4)(ii).

manage its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad-22(e)(4)(ii).¹⁰

Rule 17Ad-22(e)(23)¹¹ requires ICC to publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures, and provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. ICC's default management rules and procedures contained in the ICC Rules, the Auction Procedures, and the Secondary Auction Procedures are publicly available on ICC's website. The proposed changes to the Auction Procedures described above provide further specificity and transparency to the ICC default auction process, all of which are publicly available. Moreover, the proposed changes provide additional information on the options available to ICC on the application of juniorization to default auctions, providing market participants additional information to allow them to evaluate the risks of participating at ICC. In ICC's view, these changes are consistent with the requirements of Rule 17Ad-22(e)(23).¹²

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

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to ICC's Auction Procedures will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

¹⁰ *Id.*

¹¹ 17 CFR 240.17Ad-22(e)(23).

¹² *Id.*

(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 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-2023-009 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-2023-009. 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 am and 3 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>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ICC-2023-009 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Sherry R. Haywood,

Assistant Secretary.

¹³ 17 CFR 200.30-3(a)(12).