

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98147; File No. SR-ICC-2023-009)

August 16, 2023

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Amendment No. 1 and Partial Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 and Partial Amendment No. 2, Relating to the ICC Default Auction Procedures—Initial Default Auctions

I. Introduction

On June 22, 2023, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the ICC Default Auction Procedures—Initial Default Auctions (“Auction Procedures”). The proposed rule change was published for comment in the *Federal Register* on July 11, 2023.³ On July 20, 2023, ICC filed Amendment No. 1 to the proposed rule change.⁴ On August 8, 2023, ICC filed Partial Amendment No. 2 to the proposed rule change.⁵ The Commission did not receive comments regarding the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Default Auction Procedures-Initial Default Auctions; Exchange Act Release No. 97840 (July 5, 2023), 88 FR 44171 (July 11, 2023) (File No. SR-ICC-2023-009) (“Notice”).

⁴ Amendment No. 1 amended and restated in its entirety the Form 19b-4, Exhibit 1A, and Exhibit 5 to correct a typographical error in the Auction Procedures. Amendment No. 1 does not change the purpose or basis of the proposed rule change.

⁵ Partial Amendment No. 2 replaced and superseded Amendment No. 1, and amended and restated in its entirety the Form 19b-4, Exhibit 1A, and Exhibit 5, in addition to including Exhibit 4, to correct a typographical error in the Auction Procedures. Partial Amendment No. 2 does not change the purpose or basis of the proposed rule change.

The Commission is publishing this notice to solicit comments on Amendment No. 1 and Partial Amendment No. 2 from interested persons, and, for the reasons discussed below, is approving the proposed rule change, as modified by Amendment No. 1 and Partial Amendment No. 2 (collectively, the “proposed rule change”), on an accelerated basis.

II. Description of the Proposed Rule Change

ICC is registered with the Commission as a clearing agency for the purpose of clearing Credit Default Swap (“CDS”) contracts. ICC clears CDS contracts for its clearing members, which ICC calls Clearing Participants.⁶ In clearing CDS contracts, ICC is exposed to a variety of risks, including exposure to losses and liquidity demands, in situations such as a Clearing Participant default. One way ICC protects against such risk is by ensuring that it has the authority and operational capacity to take timely action during a Clearing Participant default. To minimize impact on non-defaulting Clearing Participants and its own obligations, ICC established the Auction Procedures, which document requirements and processes for holding an auction in the event of a Clearing Participant default. The Auction Procedures are designed to facilitate liquidation of a defaulting Clearing Participant’s portfolio through a multi-lot modified Dutch auction.⁷

The proposed rule change would revise the Auction Procedures to (1) provide an additional exception to ICC’s minimum bid requirement under particular conditions, and (2) treat all Auction Participants⁸ as senior bidders in certain market-dependent

⁶ Capitalized terms not otherwise defined herein have the meanings assigned to them in the ICC Default Auction Procedures—Initial Default Auctions or the ICC Clearing Rules.

⁷ Notice, 88 FR at 44171.

⁸ Auction Participants are all non-defaulting Clearing Participants and any Direct Participating Customer(s), defined as a Clearing Participant’s customer(s) that ICC has authorized to participate

circumstances. These proposed amendments, as described below, are intended to incorporate feedback received from market participants during ICC's 2022 default test.⁹ The proposed revisions would also better align ICC's Auction Procedures with those of other clearing houses (e.g., LCH Ltd, LCH SA, and Eurex),¹⁰ according to market participants' feedback.¹¹

A. *Additional Exception to Minimum Bid Requirement*

Generally, in the event of an auction to liquidate a defaulting Clearing Participant's portfolio, all non-defaulting Auction Participants are required to submit minimum bids ("Minimum Bid Requirement"). Currently, Section 2.4 requires Auction Participants to bid for a minimum notional amount of contracts for each auction, the lot determined *pro rata* based on its required contribution to the ICC guaranty fund, subject to certain exceptions.¹² The proposed rule change would amend the Auction Procedures to provide an additional exception to the Minimum Bid Requirement. Under the proposed exception, the Minimum Bid Requirement would not apply if ICC determined that it would be inappropriate for certain Auction Participants in light of: (i) the operational and other capabilities of such an Auction Participant to clear contracts in the

directly in an ICC default auction pursuant to the requirements set out in Section 2.6 of the Auction Procedures. *Id.* at n.4.

⁹ Notice, 88 FR at 44171.

¹⁰ These three 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. Notice, 88 FR at 44172.

¹¹ Notice, 88 FR at 44172.

¹² Notice, 88 FR at 44171. For example, a Minimum Bid Requirement shall not apply to an Auction Participant for a particular Lot to the extent it would be in breach of applicable law or ICC Rules, or the Lot includes Contracts that are sovereign CDS referencing the country in which the Auction Participant or its parent company is domiciled. *See* ICC Initial Auction Procedure, Section 2.4.

relevant auction lot, or (ii) the conditions in the market for the contracts in the relevant auction lot.¹³ For example, under the proposed rule change, ICC would be allowed to determine whether the Minimum Bid Requirement would apply to an Auction Participant if the Auction Participant does not have risk management or other operational capabilities to clear the types of contracts involved in a particular auction,¹⁴ or if market conditions change for certain types of contracts.¹⁵ ICC represents that the proposed change is designed to disapply minimum bid requirements where they might lead to an increase in systemic risk or be inappropriate or undesirable in light of ICC's goal of running a successful auction.¹⁶

B. Treatment of Auction Participants as Senior Bidders

Currently, ICC's rules specify how losses from a default auction will be applied.¹⁷ Under such prioritization, losses would be applied to the collateral of a member that does not participate in a default auction before being applied to other members' collateral ("juniorization"). ICC proposes to amend the Auction Procedures to allow ICC to disapply such juniorization where ICC determines that juniorization may make it more difficult to run a successful auction or is otherwise inappropriate or undesirable for the particular lot in light of certain market conditions or circumstances at the time. In effect,

¹³ *Id.*

¹⁴ For instance, 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, such as index swaptions. In that case, if such a participant were forced to bid for lots that included these types of products during the course of the auction, the participant might acquire products for which it may not have the ready capability to manage the risk of its positions, thereby potentially increasing systemic risk. *Id.*

¹⁵ Notice, 88 FR at 44171-2.

¹⁶ Notice, 88 FR at 44172.

¹⁷ *See* Auction Procedures, Section 3.3.

under the proposed rule change, ICC would be allowed to determine 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.¹⁸

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.¹⁹ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act²⁰ and Rule 17Ad-22(e)(13)²¹ thereunder.

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Credit “are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.”²² Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to the Auction

¹⁸ Such changes would maintain the incentives for competitive bidding in a default auction as Auction Participants still would be incentivized to protect their guaranty fund deposits and assessment contributions, and juniorization would be expected to continue to apply in most circumstances. Notice, 88 FR at 44172.

¹⁹ 15 U.S.C. 78s(b)(2)(C).

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

²¹ 17 CFR 240.17Ad-22(e)(13).

²² 15 U.S.C. 78q-1(b)(3)(F).

Procedures are consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions.

The proposed additional exception to the Minimum Bid Requirement provides ICC with greater flexibility to administer a default auction with the appropriate set of Auction Participants and respond to changing market conditions promptly, while maintaining its clearance and settlement responsibilities with the least possible disruption. The proposed amendments would allow ICC to determine whether an Auction Participant has the operational or other capabilities required to clear contracts in a particular lot, thus ensuring an appropriate fit between the Auction Participants and the types of contracts involved in the auction. The proposal would also give ICC the leeway to respond to changing market forces to hold a timely default auction that is responsive to the characteristics and implications of the contracts in the relevant auction lot. Similarly, the proposed revisions to the Auction Procedures would give ICC the latitude to disapply the Default Auction Priority and treat all Auction Participants as senior bidders in limited circumstances, thus helping ICC run a successful, effective, and efficient default auction in circumstances where the juniorization of Auction Participants would be unsuitable for the auction, and facilitating the prompt and accurate close-out of the defaulter's portfolio.

As such, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.²³

B. Consistency with Rule 17Ad-22(e)(13)

Rule 17Ad-22(e)(13) requires ICC to “establish, implement, maintain, and enforce written policies and procedures reasonably designed to [...] [e]nsure the covered

²³ 15 U.S.C. 78q-1(b)(3)(F).

clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations [...].”²⁴ Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to the Auction Procedures are consistent with the requirements of Rule 17Ad-22(e)(13).²⁵

The proposed exception to the Minimum Bid Requirement would provide ICC the authority to not force a Clearing Participant to bid on lots containing contracts that the Clearing Participant is not equipped to manage financially or operationally. Excepting such a Clearing Participant from the bidding process should reduce the likelihood of ICC receiving poor quality bids, thereby improving the auction process. In foregoing the Minimum Bid Requirement for Auction Participants who are not appropriately positioned to take on certain types of contracts, ICC would be giving itself the ability to take steps, in limited circumstances, to streamline the auction process and limit potential losses or liquidity demands resulting from a Clearing Participant’s default. Similarly, the proposed change to allow ICC to disapply the juniorization of certain Clearing Participants’ guaranty fund contributions would better align ICC’s default management practices with its members’ financial and operational capacities. Imposing the Minimum Bid Requirement or incentivizing bidding through the juniorization process where a Clearing Participant lacks necessary financial or operational capabilities could result in that Clearing Participant acquiring products whose risks it is not prepared to manage. The proposed rule change would allow ICC to protect the integrity of the default auction and

²⁴ 17 CFR 240.17Ad-22(e)(13).

²⁵ *Id.*

increase its likelihood of success by ensuring that the bids received are provided by members most able to value and risk manage the defaulter's portfolio.

IV. Solicitation of Comments on Amendment No. 1 and Partial Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1 and Partial Amendment No. 2, 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 email 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 email 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*].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 and Partial Amendment No. 2

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁶ to approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing of Amendment No. 1 and Partial Amendment No. 2 in the Federal Register. As discussed above, Amendment No. 1 amended and restated in its entirety the Form 19b-4, Exhibit 1A, and Exhibit 5 to correct a typographical error in the Auction Procedures, and Partial Amendment No. 2 replaced and superseded Amendment No. 1, and amended and restated in its entirety the Form 19b-4, Exhibit 1A, and Exhibit 5, in addition to including Exhibit 4, to correct a typographical error in the Auction

²⁶ 15 U.S.C. 78s(b)(2).

Procedures. Amendment No. 1 and Partial Amendment No. 2 do not change the purpose of or basis for the proposed changes.

For similar reasons as discussed above, the Commission finds that Amendment No. 1 and Partial Amendment No. 2 are consistent with the requirement that ICC's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions under Section 17A(b)(3)(F) of the Act.²⁷ Accordingly, the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1 and Partial Amendment No. 2, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.²⁸

²⁷ 15 U.S.C. 78q-1(b)(3)(F).

²⁸ 15 U.S.C. 78s(b)(2).

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Amendment No. 1 and Partial Amendment No. 2, is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act, and Rule 17Ad-22(e)(13) thereunder.²⁹

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act³⁰ that the proposed rule change (SR-ICC-2023-009), as modified by Amendment No. 1 and Partial Amendment No. 2, be, and hereby is, approved on an accelerated basis.³¹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,

Assistant Secretary.

²⁹ 15 U.S.C. 78q-1(b)(3)(F); 17 CFR 240.17Ad-22(e)(13).

³⁰ 15 U.S.C. 78s(b)(2).

³¹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³² 17 CFR 200.30-3(a)(12).