

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91075; File No. SR-ICC-2020-014)

February 8, 2021

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures

I. Introduction

On December 22, 2020, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to revise its Clearing Participant (“CP”) Default Management Procedures (the “Default Management Procedures”).³ The proposed rule change was published for comment in the Federal Register on January 8, 2020.⁴ The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

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 ICC Clearing Rules (the “Rules”).

⁴ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures, Exchange Act Release No. 90841 (January 4, 2021), 86 Fed. Reg. 1555 (January 8, 2021) (SR-ICC-2020-014) (“Notice”).

II. Description of the Proposed Rule Change

ICC's proposed rule change would make clarifying changes to the Default Management Procedures to formalize the process for convening remote meetings of ICC's CDS Default Committee, and to update certain procedures for notifications by designated ICC officers as part of its CP default management process.⁵ This process includes the actions that ICC takes to determine that a CP is in default and to close-out the defaulting CP's portfolio.⁶

Specifically, ICC proposes revisions to Subsection 4.4 (Secure Trading Facility) of the Default Management Procedures related to convening the ICC CDS Default Committee, which consists of designated employees of eligible CPs that have CDS trading experience and are deemed seconded to ICC to assist with default management and the close-out process. Currently, Subsection 4.4 provides only for an in-person meeting of the CDS Default Committee in a private room at ICC's New York offices ("Secure Trading Facility"). The proposed changes specify that ICC may convene its CDS Default Committee at the Secure Trading Facility or remotely by teleconference ("Remote Trader Consultation") in the event the Committee is unable to meet in person. The proposed changes also specify that the ICC Chief Risk Officer ("CRO") will decide whether to convene the CDS Default Committee in person or remotely, and that such decision will depend on the circumstances at the time of the declaration of the default.

ICC also proposes updates to Section 6 (Default Declaration). Currently, Subsection 6.1.5 (CCO Pre-Declaration Initiated Actions) requires the ICC Chief

⁵ The description herein is substantially excerpted from the Notice.

⁶ See Notice, 86 Fed. Reg. at 1555.

Compliance Officer (“CCO”) to inform default contacts at the Commission and the Commodity Futures Trading Commission (“CFTC”) by telephone of a potential CP default. The proposed changes to Subsection 6.1.5 would allow the CCO to inform the default contacts at Commission and the CFTC by telephone or email of a potential default, and further direct the CCO to inform other regulators of the potential default as may be required. Amended Subsection 6.4 (Default Declaration Notification) similarly directs the CCO to notify other regulators (in addition to the Commission and the CFTC) of a default if applicable, and replaces the word “all” with “above” in the phrase “Upon the CCO confirming all notifications have been completed,” in the last paragraph of this subsection.

The proposed updates to Subsection 6.5.3 (CRO Post-Declaration Preparation) relate to the CRO’s actions to convene the CDS Default Committee after a declaration of default and to determine whether this Committee will meet in person or remotely at such post-declaration phase. If the CRO convenes an in-person CDS Default Committee meeting at the Secure Trading Facility, the proposed updates to Subsection 6.5.3 clarify that the CRO will work with ICC’s Risk Committee and other ICC staff as required to perform certain specified actions. The proposed revisions to Subsection 6.5.4 (CCO Post-Declaration Actions) make clarifications in respect of the notice that the CCO provides to the compliance personnel of a CDS Default Committee member following a declaration of a default, including the prospect that the CDS Default Committee may meet by teleconference.

ICC also proposes changes to Section 7 (CDS Default Committee Consultation). The proposed changes reference ICC’s ability to convene the CDS Default Committee

remotely. Amended Subsection 7.1 (Convening a CDS Default Committee Meeting) formalizes the process for convening a CDS Default Committee for Remote Trader Consultation, including the procedure for the CRO to request that ICC's Risk Department will provide the notice via email to CDS Default Committee members and what information is included in the notice. The changes also specify the particular email contents and other actions that would be taken for convening the CDS Default Committee at the Secure Trading Facility or by Remote Trader Consultation, respectively, or by either means. Amended Subsection 7.3 (Initial CDS Default Committee Meeting) specifies that ICC's provision of access to the cleared portfolios of defaulting CPs are conducted where technologically practicable during the initial CDS Default Committee meeting. Current Subsection 7.3 does not contain the phrase "where technologically practicable." In addition, amended Subsection 7.3 makes minor grammatical updates, including adding a parenthetical and updating the sentence structure for clarity.

III. 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 the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization presenting it.⁷ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁸ and Rules 17Ad-22(e)(2)(i), (e)(2)(v), and (e)(13) thereunder.⁹

⁷ 15 U.S.C. 78s(b)(2)(C).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 240.17Ad-22(e)(2)(i), (e)(2)(v), and (e)(13).

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 ICC 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 ICC or for which it is responsible, and, in general, to protect investors and the public interest.¹⁰

The Commission believes that, by clarifying ICC's process for convening remote meetings of its CDS Default Committee and updating its default notification procedures to regulators and CP trading and compliance personnel, the proposed rule change should enhance ICC's ability to manage the risks associated with a CP default and the timely close-out of the defaulter's CDS portfolio. Specifically, the Commission believes that, by including explicit authorization and instructions for the CRO to convene the CDS Default Committee for Remote Trader Consultation via teleconference if circumstances prevent the CDS Default Committee from meeting in person, the proposed rule change would enhance the ability of ICC to respond promptly to the risks posed by a given CP default situation and would provide particular processes for addressing a default via a Remote Trader Consultation. Likewise, the Commission believes that, by including updated notification procedures related to a CP default, ICC's relevant stakeholders, such as the CDS Default Committee members, CP trading and compliance personnel, and regulators, would be better informed of the status of a CP default situation, thus

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

facilitating their ability to participate in the default management process as needed and provide prompt and responsive feedback.

Therefore, the Commission believes that the proposed rule change generally should provide ICC with enhanced clarity, efficiency and flexibility in how it manages and responds to the risks of CP defaults, which in turn should help ICC maintain its resilience in the event of a default. By improving ICC's ability to manage a CP default, the Commission believes that the proposed rule change should also improve ICC's ability to avoid losses that could result from a CP default. The Commission further believes that such losses, if not properly managed, could hinder ICC's ability to continue operations and therefore clear and settle securities transactions and safeguard securities and funds in its custody or control. Therefore, for these reasons, the Commission finds that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICC's custody and control, consistent with the Section 17A(b)(3)(F) of the Act.¹¹

B. Consistency with Rules 17Ad-22(e)(2)(i) and (v)

Rules 17Ad-22(e)(2)(i) and (v) require, in relevant part, that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.¹²

The Commission believes that the proposed rule change's revisions to assign clear and updated responsibilities to the CRO and CCO during each phase of the default

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 17 CFR 240.17Ad-22(e)(2)(i) and (v).

declaration process in the Default Management Procedures provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. Specifically, the proposed rule change would update and clarify the CCO's pre-declaration, default declaration, and post-declaration notification responsibilities, so that information is imparted to all relevant stakeholders. Further, the proposed rule change would update and clarify the CRO's post-declaration responsibilities, including documenting the CRO's decision-making authority and actions for convening the CDS Default Committee at either an in-person meeting at the Secure Trading Facility or via Remote Trader Consultation by teleconference, depending on the circumstances at the time of the default declaration. In the Commission's view, including these responsibilities should ensure that the relevant stakeholders have clear and transparent information on their respective roles and responsibilities at each phase of the default management process. Accordingly, the Commission believes that the proposed revisions to the Default Management Procedures are reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility, consistent with Rules 17Ad-22(e)(2)(i) and (v).¹³

C. 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 ensure that it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring its participants and, when

¹³ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedure, at least annually and following material changes thereto.

By amending the Default Management Procedures to document and formalize the procedures for convening the CDS Default Committee remotely by teleconference, the proposed rule change would promote ICC's ability to efficiently and safely manage its close-out process when the CDS Default Committee cannot meet in person, which would help to ensure that ICC has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in the event of default. In addition, the Commission believes the proposed updates and clarification changes to the default notification procedures would ensure that ICC's relevant stakeholders stay informed throughout the default management process and enable them to provide responsive feedback that may also help ICC to take timely action to contain losses and liquidity demands while meeting its obligations. For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(13).¹⁴

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of

¹⁴ 17 CFR 240.17Ad-22(e)(13).

Section 17A(b)(3)(F) of the Act¹⁵ and Rules 17Ad-22(e)(2)(i), (e)(2)(v), and (e)(13) thereunder.¹⁶

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁷ that the proposed rule change (SR-ICC-2020-014) be, and hereby is, approved.¹⁸

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(e)(2)(i), (e)(2)(v), and (e)(13).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 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).

¹⁹ 17 CFR 200.30-3(a)(12).