

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91450; File No. SR-ICC-2021-006)

April 1, 2021

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice 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, 15 U.S.C. 78s(b)(1) and Rule 19b-4, 17 CFR 240.19b-4, notice is hereby given that on March 25, 2021, 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 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 rule change is to revise the ICC Clearing Rules (the “Rules”) and the ICC Exercise Procedures in connection with the clearing of credit default index Swaptions.¹

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 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 revising the ICC Rules and the ICC Exercise Procedures related to the clearing of credit default index Swaptions (“Index Swaptions”). 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. ICC proposes minor revisions to support the clearing of Index Swaptions, including updates related to iTraxx Index Swaptions, an enhancement to the exercise and assignment process, and other clarifications. ICC proposes to make the changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

I. Rule Amendments

The proposed amendments consist of minor revisions to Rule 26R-319, which addresses procedures for settlement of an exercised Index Swaption. Additional settlements may be required under Rule 26R-319(b) if one or more Credit Events has occurred with respect to the underlying index at or prior to the expiration date of the

Index Swaption. Regarding the determination of Index Swaption settlement amounts, Rule 26R-319(b)(ii) currently contemplates the inclusion of an additional accrual-related component (“Additional Accrual”) which is specified as zero in accordance with ICC Circular 2020/070.² The circular describes how ICC determines settlement amounts for cleared Index Swaptions in light of industry discussions and refers market participants to a detailed presentation on ICC’s website.³ Amended Rule 26R-319(b)(ii) would omit the description of the Additional Accrual. The circular and presentation on the determination of Index Swaption settlement amounts would remain on ICC’s website.

Regarding iTraxx Index Swaptions, ICC proposes to amend Rule 26R-319(c), which applies in the case of a relevant M(M)R Restructuring Credit Event. ICC proposes to omit paragraph (i), related to the delivery of MP Notices by Swaption Buyer and Swaption Sellers. ICC does not propose any changes to paragraph (ii), which details how an Underlying New Trade comes into effect. 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. ICC proposes to amend paragraph (iii) and remove paragraph (iv) which currently discuss the treatment of the Underlying New Trade in respect of the Event Determination Date. Instead, amended paragraph (iii) would discuss the treatment of the Underlying New Trade depending on

² ICC Circular 2020/070, issued on November 6, 2020, available at: https://www.theice.com/publicdocs/clear_credit/circulars/Circular_2020_070.pdf.

³ The presentation on Index Swaption settlement amounts is available at: https://www.theice.com/publicdocs/Index_Option_Settlement_Payments.pdf.

whether the expiration date occurred prior to, or on or following, the commencement of the CEN Triggering Period (as defined in the Restructuring Procedures).⁴ If the expiration date occurs prior to commencement of the period, the Underlying New Trade will be subject to the provisions of the CDS Restructuring Rules in Subchapter 26E (and may become a Triggered Restructuring CDS Transaction thereunder). If the Expiration Date occurs on or following commencement of such period, neither party will be permitted to deliver an MP Notice, the Underlying New Trade cannot become a Triggered Restructuring CDS Transaction and no Event Determination Date or settlement will occur.

II. Exercise Procedures

The Exercise Procedures supplement the provisions of Subchapter 26R of the Rules with respect to Index Swaptions and provide further detail as to the manner in which Index Swaptions may be exercised by Swaption Buyers, the manner in which ICC will assign such exercises to Swaption Sellers, and certain actions that ICC may take in the event of technical issues.

ICC proposes an enhancement to the exercise and assignment process in the Exercise Procedures. ICC proposes to revise Paragraph 1, which sets out key definitions used for the exercise of Index Swaptions, to reference Paragraph 2.2(e) in respect of the Pre-Exercise Notification Period. Paragraph 2.2(e) describes the Pre-Exercise Notification Period during which an exercising party can submit, modify, and/or withdraw preliminary exercise notices. The Exercise Procedures allow firms to submit

⁴ ICC Restructuring Procedures available at: https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Restructuring_Procedures.pdf.

preliminary exercise notices such that the preliminary instructions can be used as the final exercise instructions in the event of a communications failure during the exercise window. The proposed changes allow ICC to identify each exercising party's "in the money" Index Option open positions for the relevant expiration date and submit, on behalf of the exercising party, preliminary exercise notices for all such in "the money" positions. Such preliminary exercise notices submitted by ICC for an exercising party may be modified or withdrawn by the exercising party during the Pre-Exercise Notification Period. Additionally, ICC proposes a related change to Paragraph 2.2(i) to reference ICC's ability to submit, on behalf of an exercising party, a preliminary exercise notice.

ICC proposes updates to Paragraphs 2.6 and 2.8, which include procedures to address a failure of the electronic system established by ICC for exercise ("Exercise System Failure"). In such case, Paragraph 2.6 provides ICC with several options including, canceling and rescheduling the Exercise Period (i.e., the period on the expiration date of an Index Swaption during which the Swaption Buyer may deliver an exercise notice to ICC to exercise all or part of such Index Swaption). The proposed changes clarify that canceling and rescheduling the Exercise Period may include scheduling a new Pre-Exercise Notification Period, in which case any preliminary exercise notices and exercise notices submitted prior will be ineffective. Paragraph 2.8 addresses the situation where ICC will automatically exercise on the expiration date each open position (of all exercising parties) in an Index Swaption that is determined by ICC to be "in the money" on such date. ICC proposes the inclusion of additional language

relating to its determination of whether an Index Swaption is “in the money” in connection with the clearing of iTraxx Index Swaptions.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁵ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.⁶ In particular, Section 17A(b)(3)(F) of the Act⁷ 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 minor changes to the Rules and Exercise Procedures to support the clearing of Index Swaptions. As described above, with respect to iTraxx Index Swaptions, ICC proposes amending the procedures for an M(M)R Restructuring Credit Event in Rule 26R-319(c) and for the determination of whether an Index Swaption is “in the money” in Paragraph 2.8 the Exercise Procedures. The amended Exercise Procedures incorporate an additional safety feature, including in the case of a technology or communication error, to allow ICC to submit preliminary exercise notices on behalf of exercising parties, as described in Paragraph 2.2(e). The additional clarifications ensure that the Rules and Exercise Procedures remain effective, clear, and up-to-date, including by omitting the

⁵ 15 U.S.C. 78q-1.

⁶ 17 CFR 240.17Ad-22.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

description of Additional Accrual in Rule 26R-319(b), which ICC does not consider necessary in the Rules. Accordingly, in ICC's view, the proposed rule change will further 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.⁸

The amendments would also satisfy relevant requirements of Rule 17Ad-22.⁹ Rule 17Ad-22(e)(1)¹⁰ 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 activities in all relevant jurisdictions. The Exercise Procedures supplement the provisions of Subchapter 26R of the Rules with respect to Index Swaptions and further ensure that ICC's Rules clearly reflect the terms and conditions applicable to Index Swaptions. The proposed changes would support the clearing of Index Swaptions by ICC, including updates related to iTraxx Index Swaptions and other clarifications, to ensure that the ICC Rules and Exercise Procedures clearly and accurately reflect the requirements and procedures applicable to iTraxx Index Swaptions and Index Swaptions more generally.

⁸ Id.

⁹ 17 CFR 240.17Ad-22.

¹⁰ 17 CFR 240.17Ad-22(e)(1).

The proposed rule change would continue to support the legal basis for ICC's clearance of Index Swaptions and operation of the exercise and assignment process, including addressing situations where there are technical issues. As such, the proposed rule change would satisfy the requirements of the Rule 17Ad-22(e)(1).¹¹

Rule 17Ad-22(e)(10)¹² 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, which result in the creation of a cleared underlying index CDS Contract (and in some cases in the event of a Restructuring Credit Event, an Underlying New Trade. The proposed Rule amendments consist of changes related to the clearing of iTraxx Index Swaptions and other clarifications. ICC proposes to omit the description of Additional Accrual in Rule 26R-319(b), which ICC does not consider necessary in the Rules. A more comprehensive explanation on the determination of Index Swaption settlement amounts would remain, and is more fitting, in the circular and presentation on ICC's website. Regarding of iTraxx Index Swaptions, ICC would revise Rule 26R-319(c), applicable in the case of a relevant M(M)R Restructuring Credit Event, and the treatment of the Underlying New Trade would depend on whether the expiration date occurred

¹¹ Id.

¹² 17 CFR 240.17Ad-22(e)(10).

prior to, or on or following, the commencement of the CEN Triggering Period. In ICC’s view, the Rules 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).¹³

Rule 17Ad-22(e)(17)¹⁴ 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 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, which allows ICC to identify plausible sources of operational risks in clearing Index Swaptions and minimize their impact through appropriate systems, policies, procedures, and controls. The proposed changes allow ICC to identify each exercising party’s “in the money” Index Option open positions for the relevant expiration date and submit preliminary exercise notices for all such in “the money” positions. These revisions are intended to serve as a safety feature, including in the case of a technology or communication error, and such preliminary exercise notices submitted by ICC may be modified or withdrawn by the exercising party during the Pre-

¹³ Id.

¹⁴ 17 CFR 240.17Ad-22(e)(17)(i)-(ii).

Exercise Notification Period. Such procedures are 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).¹⁵

(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 ICC 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.

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

¹⁵ Id.

(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-2021-006 on the subject line.

Paper Comments:

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549.

All submissions should refer to File Number SR-ICC-2021-006. 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, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2021-006 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).