

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91733; File No. SR-ICC-2021-013)

April 30, 2021

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC End-of-Day Price Discovery Policies and Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder², notice is hereby given that on April 23, 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 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

The principal purpose of the proposed rule change is to make changes to ICC’s End-of-Day Price Discovery Policies and Procedures (“Pricing Policy”). These revisions do not require any changes to the ICC Clearing Rules (the “Rules”).

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.

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 the Pricing Policy, which sets out ICC's end-of-day ("EOD") price discovery process that provides prices for cleared contracts using submissions made by Clearing Participants ("CPs"). ICC believes such 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 amendments are described in detail as follows.

ICC proposes updates related to firm trade obligations and other clarifications. Under the Pricing Policy, to encourage CPs to provide the best possible EOD submissions, ICC selects a subset of the potential trades generated and designates them as firm trades, which CPs are entered into as cleared transactions. ICC selects specific dates on which it can require CPs to execute firm trades ("firm trade days"). For each firm trade day, ICC specifies the instruments that may become firm trade eligible, subject to certain specified criteria. Amended Section 2.4.1 incorporates additional criteria that must be met for the generation of firm trades, referred to as the trade price deviation constraint (the "constraint"). The proposed changes reference the constraint throughout Section 2.4.1, specifically in subsections (a), (b), and (c), and describe the constraint in subsection (d). Under the constraint, ICC avoids creating a high number of trades around its EOD levels by not designating potential trades as firm trades if the magnitude of the

hypothetical profit/loss is smaller in magnitude than the absolute value of the difference between the EOD level and either the bid price or offer price. ICC would only designate a potential trade as a firm trade if the trade level fell outside the EOD level plus/minus one half the EOD bid-offer width (“BOW”) for the given instrument. Such constraint would not apply when the potential firm trade is formed by crossing two outlying submission trades.

With respect to credit default index swaptions (“Index Options”), ICC proposes additional language on the designation of a potential trade as a firm trade, subject to the CP open interest and ICC open interest requirements in amended Subsection 2.4.1.c. Similar requirements are currently incorporated in the Pricing Policy for indices and single names. Under the CP open interest requirement, for ICC to designate a potential trade as a firm trade, both parties must have cleared open interest, as of the designated times, in one or more Index Option instrument sharing the same underlying index instrument, expiration date, strike convention, exercise style and transaction type. Under the ICC open interest requirement, ICC only designates a potential trade in a given Index Option instrument as a firm trade if ICC has cleared open interest in that instrument.

ICC proposes additional clarifications to the Pricing Policy. In Section 2.2.2, ICC proposes to abbreviate a term. ICC proposes revisions to Section 2.6 to more clearly set out the circumstances under which a CP may participate in the EOD price discovery process on behalf of another CP. The amendments specify that a CP may allow an affiliated CP to participate in the EOD price discovery process on its behalf. In Section 3, ICC proposes to memorialize that the Pricing Policy is subject to review by the Risk Committee and review and approval by the Board at least annually.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act³ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.⁴ In particular, Section 17A(b)(3)(F) of the Act⁵ 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 believes that the proposed amendments promote its ability to maintain the effectiveness and integrity of its EOD price discovery process. Under the proposed constraint, ICC avoids creating a high number of trades around its EOD levels by not designating potential trades as firm trades if the magnitude of the hypothetical profit/loss is smaller in magnitude than the absolute value of the difference between the EOD level and either the bid price or offer price. The purpose of EOD firm trades is to maintain the robustness of the established price discovery process, and on-market firm trades do not incentivize the correction of outlying submissions. The additional clarifications further ensure that the Pricing Policy remain effective, clear, and up-to-date to support the effectiveness of ICC's EOD price discovery process, including by incorporating language on the designation of a potential trade as a firm trade, subject to the CP open interest and ICC

³ 15 U.S.C. 78q-1.

⁴ 17 CFR 240.17Ad-22.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

open interest requirements for Index Options; clarifying the circumstances under which a CP may participate in the EOD price discovery process on behalf of another CP; and memorializing the review and approval process for the document. The proposed rule change is therefore 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.⁶

The amendments would also satisfy relevant requirements of Rule 17Ad-22.⁷ Rule 17Ad-22(e)(2)(i) and (v)⁸ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The Pricing Policy subjects the ICC EOD price discovery process to a governance and oversight structure that promotes transparency and accountability and clearly assigns and documents responsibility for relevant actions and decisions. The proposed changes strengthen the governance procedures and arrangements detailed in the Pricing Policy by memorializing the review and approval of the document by relevant groups at least annually. As such, in ICC's view, the proposed rule change continues to ensure that ICC maintains policies and procedures that are reasonably

⁶ Id.

⁷ 17 CFR 240.17Ad-22.

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

designed to provide for clear and transparent governance arrangements and specify clear and direct lines of responsibility, consistent with Rule 17Ad-22(e)(2)(i) and (v).⁹

Rule 17Ad-22(e)(3)(i)¹⁰ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the board of directors annually. ICC maintains a sound risk management framework that identifies, measures, monitors, and manages the range of risks that it faces. The Pricing Policy is a key aspect of ICC's risk management approach, and the proposed amendments would memorialize that the document is reviewed by the Risk Committee and reviewed and approved by the Board at least annually. As such, the amendments would satisfy the requirements of Rule 17Ad-22(e)(3)(i).¹¹

Rule 17Ad-22(e)(6)(iv)¹² requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to

⁹ Id.

¹⁰ 17 CFR 240.17Ad-22(e)(3)(i).

¹¹ Id.

¹² 17 CFR 240.17Ad-22(e)(6)(iv).

cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. ICC believes that the proposed constraint is appropriately designed to support and maintain the effectiveness of ICC's EOD price discovery process that provides reliable prices, which ICC uses for risk management purposes. As described above, under the proposed constraint, ICC would only designate a potential trade as a firm trade if the trade level fell outside the EOD level plus/minus one half the EOD BOW for the given instrument. The purpose of EOD firm trades is to maintain the robustness of the established price discovery process, and on-market firm trades do not incentivize the correction of outlying submissions. The constraint would not apply when the potential firm trade is formed by crossing two outlying submission trades. Moreover, the proposed clarifications ensure that the Pricing Policy remains effective and transparent by adding language on the designation of a potential trade in an Index Option as a firm trade, subject to the CP open interest and ICC open interest requirements, and by clarifying the circumstances under which a CP may participate in the EOD price discovery process on behalf of another CP. In ICC's view, such changes are appropriately designed to promote and maintain the effectiveness and integrity of the Pricing Policy and the EOD price discovery process that provides reliable prices, consistent with the requirements of Rule 17Ad-22(e)(6)(iv).¹³

¹³ Id.

(B) Clearing Agency's Statement on 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 the Pricing Policy will apply uniformly across all market participants. Therefore, ICC does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purposes 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

(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-2021-013 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-2021-013. 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 10:00 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-2021-013 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.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).