

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83513; File No. SR-ICC-2018-006)

June 25, 2018

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to Amending the ICC Clearing Rules Regarding Mark-to-Market Margin

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4² thereunder, notice is hereby given that on June 13, 2018, 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, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed changes is to make changes to the ICC Clearing Rules (the “ICC Rules”) to more clearly characterize Mark-to-Market Margin payments as settled-to-market rather than collateralized-to-market.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

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 examined at the places specified in Item IV below. ICC has prepared summaries, set

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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, Security-Based Swap Submission, or Advance Notice

(a) Purpose

ICC proposes revisions to Chapters 4, 8, and 20 of the ICC Rules to more clearly characterize Mark-to-Market Margin payments as settlement payments (“settled-to-market”) rather than collateral (“collateralized-to-market”). Under the settled-to-market model, the transfer of Mark-to-Market Margin constitutes a settlement of the contract’s outstanding exposure, with the receiving party taking outright title to the Mark-to-Market Margin and the transferring party retaining no rights to such margin. Under the collateralized-to-market model, the transfer of Mark-to-Market Margin constitutes a pledge of collateral, such that the transferring party has a right to reclaim the collateral and the receiving party has an obligation to return the collateral.³

ICC previously revised the Rules in 2015 to clarify that Mark-to-Market Margin constituted a settlement payment. Such revisions did not result in a change in the manner in which Mark-to-Market Margin was calculated, paid or collected, and were intended to

³ Use of a settled-to-market model, rather than a collateralized-to-market model, is consistent with requirements applicable to a derivatives clearing organization, as interpreted by Commodity Futures Trading Commission (“CFTC”) staff. CFTC Interpretive Letter No. 17-51 (Oct. 12, 2017) (“CFTC Letter”). Use of a settled-to-market model also may result in more favorable capital treatment for positions in cleared derivatives for market participants that are subject to regulations of U.S. banking supervisors implementing the Basel III capital framework. See Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Regulatory Capital Treatment of Certain Centrally-cleared Derivative Contracts Under Regulatory Capital Rules (Aug. 14, 2017).

provide further clarity regarding the finality of ICC's settlement cycle.⁴ ICC is proposing additional clarifying changes to the Rules. As with the prior changes, the proposed amendments do not change the manner in which Mark-to-Market Margin is calculated, or other current ICC operational practices. Rather, such changes consist of additional revisions to terminology to further clarify the legal characterization that payments of Mark-to-Market Margin represent settlement rather than collateral payments. These clarifying changes result from further legal analysis with respect to ICC's characterization of Mark-to-Market Margin payments as settlement rather than as posting of collateral, as requested by its Clearing Participants ("CPs"). The proposed revisions are described in detail as follows.

ICC proposes revising Rule 401 to reference Mark-to-Market Margin Balance, a new term that is defined in Rule 404 and refers to the aggregate amount of Mark-to-Market Margin paid or received. The term is used in several calculations, avoids the need to repeat the definition, and allows ICC to more clearly and fully describe specifics pertaining to its Mark-to-Market Margin calculation in a single section without combining it with other concepts. ICC proposes adding language to Rule 401(a), which governs House Margin, to state that ICC calculates a net amount of Mark-to-Market Margin by subtracting a CP's Mark-to-Market Margin Balance from a CP's Mark-to-Market Margin Requirement. ICC proposes corresponding changes referencing Mark-to-Market Margin Balance in Rule 401(b)(ii), which covers Client-Related Mark-to-Market Margin. Such changes are not intended to modify the current calculation of Mark-to-Market Margin, or other operational practices, but, instead, replace certain specifics

⁴ SR-ICC-2015-008.

relating to ICC's Mark-to-Market Margin calculation with the defined term. The amendments do not change the manner in which Initial Margin is calculated, posted and held.

Further, ICC proposes to specify that a CP's Mark-to-Market Margin Balance is adjusted by an amount called the price alignment amount in revised Rule 401(g). Specifically, ICC proposes to state that it will pay or charge a CP price alignment amounts on any Mark-to-Market Margin and interest on any cash Initial Margin at a rate that may be negative. A price alignment amount is economically equivalent to the "interest" that ICC pays or charges a CP for any net Mark-to-Market Margin transferred between the parties under current Rule 401(g). However, since the term interest may be more typically associated with collateral, ICC proposes to refer to such an amount as price alignment to avoid confusion over the proper characterization of Mark-to-Market Margin as settlement payments.⁵ Such change will not affect operations, since ICC will continue to pay or charge a CP an amount, which serves the same purpose and is calculated identically, for any net Mark-to-Market Margin transferred between the parties. ICC also proposes separate clarifying language to note that the rate at which it pays or charges such an amount may be negative, to more clearly address the possibility of negative market rate environments.

ICC proposes to specifically reference the applicable category of margin to avoid confusion over the proper characterization of Mark-to-Market Margin under the ICC Rules. ICC proposes to update Rule 401(h) to refer to substitutions of Initial Margin, and Rule 401(l) to refer to settlement finality in relation to Mark-to-Market Margin. The

⁵ See CFTC Letter, *supra*, for a discussion of the use of price alignment amount instead of price alignment interest.

proposed changes to Rule 402, which governs ICC's rights with respect to the use of margin, exclude Mark-to-Market Margin from subsections (a) and (b), remove details relating to Mark-to-Market Margin from subsection (b), and specify subsection (c)'s applicability to Initial Margin. ICC proposes adding language to Rule 402(e) to more clearly state that Mark-to-Market Margin payments constitute a settlement. Further, ICC proposes adding new subsection (c) to Rule 404 to define Mark-to-Market Margin Balance as a sum equal to the Mark-to-Market Margin value transferred by the CP to ICC minus the Mark-to-Market Margin value transferred by ICC to the CP. To avoid uncertainty, ICC also proposes to specifically reference the applicable category of margin in Rule 406(c). Namely, ICC proposes to clarify that the requirements set forth in Rule 406(c) regarding Client-Related Positions apply to Initial Margin.

ICC proposes clarifications and conforming changes to Chapters 8 and 20 of the ICC Rules. ICC proposes clarifying language in Rule 801(a)(i) to refer to the transfer of Mark-to-Market Margin to avoid confusion over the proper characterization of Mark-to-Market Margin as settlement payments, since ICC considers the loss after the application of Initial Margin and taking into account settlement of Mark-to-Market Margin to be uncollateralized loss. Under the proposed updates, Rule 808 includes a conforming reference to Mark-to-Market Margin Balance. The proposed changes to Rule 810(e) replace terminology that is commonly used in conjunction with collateral to avoid confusion over the proper characterization of Mark-to-Market Margin as settlement payments. ICC proposes to clarify in Rule 20-605(c)(i)(B), which specifies the resources to be used to cover losses with respect to Client-Related Positions, that ICC will use the

defaulting CP's Client-Related Mark-to-Market Margin, to the extent not previously applied to pay Mark-to-Market Margin to other CPs.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act⁶ 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; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F)⁷, because ICC believes that the proposed rule changes will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, and 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. The proposed changes to the ICC Rules are consistent with the current calculation of Mark-to-Market Margin and related operational practices and are intended to more clearly reflect the legal characterization of Mark-to-Market Margin payments as settlement rather than collateral payments. The proposed changes are designed to add certainty to ICC's Rules by incorporating clarifying language and changes to avoid a potential mischaracterization of Mark-to-Market Margin payments.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ Id.

The proposed revisions will provide market participants with certainty surrounding ICC's treatment of Mark-to-Market Margin, which will facilitate compliance with market participants' own capital requirements and therefore further the public interest. As such, the proposed changes provide additional clarity and transparency in the ICC Rules and are designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions within the meaning of Section 17A(b)(3)(F)⁸ of the Act.

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

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition. The changes, which further clarify that payments of Mark-to-Market Margin represent settlement rather than collateral payments, result in no operational changes and apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice 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 , Security-Based Swap Submission, or Advance Notice 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

⁸ Id.

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, security-based swap submission, or advance notice 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-2018-006 on the subject line.

Paper Comments:

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICC-2018-006. 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, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice 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-2018-006 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.⁹

Eduardo A. Aleman
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).