

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83819; File No. SR-ICC-2018-009)

August 10, 2018

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to ICC's Treasury Operations Policies and Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4,² notice is hereby given that on July 31, 2018, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("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 rule change is to revise the ICC Treasury Operations Policies and Procedures ("Treasury Policy"). These revisions do not require any changes to the ICC Clearing Rules ("Rules").

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 its Treasury Policy. 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. The proposed revisions are described in detail as follows.

ICC proposes to update the ICC Treasury Policy in light of the exemptive order³ (the “Order”) that was issued by the Commodity Futures Trading Commission (“CFTC”) permitting ICC to invest, subject to certain conditions, Euro-denominated customer funds in French and German sovereign debt. ICC was prohibited from investing customer funds in foreign sovereign debt by CFTC Regulation 1.25,⁴ which does not permit such investments. As such, ICC is proposing changes to its Treasury Policy to permit its Treasury Department to directly invest both US Dollar- (“USD”) and Euro-denominated Guaranty Fund (“GF”) and margin cash posted by Clearing Participants (“CPs”) (“house origin cash”); to invest Euro-denominated cash posted by CPs for their margin requirements related to client positions (“customer origin cash”) in French and German sovereign debt; to revise its Euro investment guidelines to limit investment to French and

³ 83 FR 35241 (July 25, 2018).

⁴ 17 CFR 1.25.

German sovereign debt; and to make additional clarification and clean-up changes throughout the document to enhance readability.

ICC proposes to revise the ‘Funds Management’ section. ICC proposes clarifying changes that move reference to its default position of holding USD-denominated house origin cash in its Federal Reserve Account from the ‘Investment Strategy’ subsection to the amended ‘ICC Investment of Guaranty Fund and Margin Cash’ subsection, which is separated into USD and Euro. ICC proposes clarifying language within the proposed ‘USD’ subsection to note that, if ICC is unable to deposit house origin cash in its Federal Reserve Account, ICC’s Treasury Department may hold or invest such USD cash as specified within the Treasury Policy. ICC also proposes a revision to correct a typographical error by adding the verb “has” to the phrase “ICE Clear Credit arrangements.”

In the proposed ‘Euro’ subsection, ICC proposes to permit its Treasury Department to directly invest Euro-denominated house origin cash. Under the current ICC Treasury Policy, the ICC Treasury Department is only permitted to directly invest USD-denominated house origin cash. Specifically, ICC proposes to state that Euro-denominated house origin cash will be (i) held in bank deposits, (ii) allocated to outside investment managers, or (iii) directly held/invested by the ICC Treasury Department pursuant to the Euro investment guidelines in the appendix. Under the proposed changes, ICC’s Treasury Department is permitted to directly execute the Euro investment guidelines.

In the ‘Outside Investment Management of Guaranty Fund and Margin Cash’ subsection, ICC proposes removing reference to a specific outside investment manager to

reflect ICC’s engagement of multiple outside investment managers. ICC also proposes to correct certain typographical errors in this section to improve readability, including removing the indefinite article “an” in the phrase “an alternative or additional outside investment managers”, adding the definite article “the” to the phrase “Investment Manager’s investment”, and changing “Directory of Treasury” to “Director of Treasury” in a footnote.

ICC proposes removing language from the ‘Treasury Management for Client Business’ section that references the introduction of client trades to clarify that ICC has already commenced client clearing.

ICC proposes the new ‘Investment of Client Margin Cash’ subsection within the ‘Treasury Management for Client Business’ section, which specifically relates to ICC’s investment of customer origin cash. Currently, the ICC Treasury Policy prohibits ICC from investing customer origin cash in foreign sovereign debt due to CFTC Regulation 1.25,⁵ which does not permit such investments. In light of the CFTC’s Order,⁶ ICC proposes to state that it will invest customer origin cash in compliance with CFTC Regulation 1.25,⁷ including any applicable exemptive orders and including, without limitation, the conditions in CFTC Regulation 1.25⁸ related to the investment of customer origin cash in non-U.S. sovereign debt.

⁵ Id.

⁶ 83 FR 35241 (July 25, 2018).

⁷ 17 CFR 1.25.

⁸ Id.

ICC proposes revisions to the Euro investment guidelines appendix. ICC proposes to include a footnote, for clarity, stating that its Treasury Department can directly execute the Euro investment guidelines. ICC also proposes to extend the Euro investment guidelines to ICC's segregated CFTC Cleared Swaps Customer initial margin portfolio. ICC's Euro investment guidelines provide for the investment of Euro cash in overnight reverse repurchase ("repo") transactions with high quality sovereign debt as collateral. If 100% of the allocated cash cannot be placed in overnight reverse repo, backup investments will be in term reverse repo and then direct investment in high quality sovereign debt. Under the current Euro investment guidelines, investment in reverse repo and foreign sovereign debt is utilized only with respect to house origin cash and not customer origin cash pursuant to CFTC regulation. Given the CFTC's Order⁹ that allows ICC to invest Euro-denominated customer funds in French and German sovereign debt, ICC proposes to make its investment policies for Euro-denominated cash applicable to both customer origin and house origin cash. ICC further proposes to make the Euro investment guidelines uniform for both customer origin and house origin cash. Specifically, ICC proposes to revise the Euro investment guidelines to limit permissible investment, both directly and through reverse repo, to French and German sovereign debt given the comparability of French and German sovereign debt to U.S. government securities in terms of creditworthiness, liquidity, and volatility.¹⁰ With respect to customer origin cash, the proposed changes require that investments comply with any

⁹ 83 FR 35241 (July 25, 2018).

¹⁰ See ICE Clearing House Application for Exemptive Order (June 22, 2017) for a discussion of the suitability of French and German sovereign debt, available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@requestsandactions/documents/ifdocs/icedcos4cappl6-22-17.pdf>.

applicable conditions or restrictions set forth in CFTC Regulation 1.25¹¹ including any applicable exemptive orders and allow the use of term reverse repo subject to a certain restriction. Additionally, should conditions change so that the French or German sovereign debt no longer meets the conditions or restrictions of CFTC Regulation 1.25,¹² the outside investment manager shall discontinue making any additional investments in such sovereign debt issuers.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act¹³ 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 17(A)(b)(3)(F)¹⁴, 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

¹¹ 17 CFR 1.25.

¹² Id.

¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴ Id.

which ICC is responsible. The proposed changes permitting ICC to invest Euro-denominated customer funds in French and German sovereign debt are designed to further ensure the reliable investment of assets in ICC's control with minimal risk. Euro-denominated customer fund balances must be held in unsecured bank demand deposits accounts, exposing ICC and its CPs and their customers to the credit risk of such banks. ICC believes that the proposed changes, given the CFTC's Order,¹⁵ to invest Euro-denominated customer funds in French and German sovereign debt would provide for an important alternative for the protection of customer funds. Moreover, allowing the Treasury Department to directly invest both USD and Euro-denominated house origin cash will continue to ensure the reliable investment of assets in ICC's control with minimal risk by allowing the Treasury Department to directly execute the Euro investment guidelines, thereby facilitating ICC's ability to promptly and accurately clear and settle its cleared CDS contracts and enhancing ICC's ability to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible. The clarification and clean-up changes that enhance readability will further ensure that the documentation of ICC's Treasury Policy remains up-to-date, clear, and transparent. As such, the proposed rule changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and to 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 within the meaning of Section 17A(b)(3)(F) of the Act.¹⁶

¹⁵ 83 FR 35241 (July 25, 2018).

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

In addition, the proposed revisions to the ICC Treasury Policy are consistent with the relevant requirements of Rule 17Ad-22.¹⁷ Rule 17Ad-22(b)(3)¹⁸ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. The proposed changes to the Euro investment guidelines that limit investment to French and German sovereign debt and apply to both house origin and customer origin cash serve to preserve principle and maintain liquidity of funds as such debt has credit, liquidity, and volatility characteristics that are comparable to U.S. government securities, thereby ensuring that ICC continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad-22(b)(3).¹⁹

Rule 17Ad-22(d)(3)²⁰ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or of delay in its access to them and to invest assets in instruments with minimal credit, market, and liquidity risks. ICC believes that the proposed changes allowing ICC to invest Euro-denominated customer funds in French and German sovereign debt and allowing the Treasury Department to directly invest both USD and

¹⁷ 17 CFR 240.17Ad-22.

¹⁸ 17 CFR 240.17Ad-22(b)(3).

¹⁹ Id.

²⁰ 17 CFR 240.17Ad-22(d)(3).

Euro-denominated house origin cash and directly execute the Euro investment guidelines will enhance ICC's ability to hold assets in a manner that minimizes risk of loss or of delay in its access to them by serving as an important alternative for the protection of funds. Additionally, the proposed revisions to the Euro investment guidelines that limit investment to French and German sovereign debt for house origin cash allow ICC to continue to ensure to hold assets in a manner that minimizes risk of loss or of delay in its access to them and to invest assets in instruments with minimal credit, market, and liquidity risks given the comparability of French and German sovereign debt to U.S. government securities in terms of creditworthiness, liquidity, and volatility. Such changes are therefore reasonably designed to meet the requirements of Rule 17Ad-22(d)(3).²¹

(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 proposed changes to ICC's Treasury Policy will 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.

²¹ Id.

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 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-2018-009 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-2018-009. 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, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will 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-2018-009 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.²²

Brent J. Fields
Secretary

²² 17 CFR 200.30-3(a)(12).