

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87297; File No. SR-ICC-2019-007)

October 15, 2019

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICC Rules, ICC End-of-Day Price Discovery Policies and Procedures, and ICC Risk Management Framework

I. Introduction

On June 28, 2019, 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 (the “Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to make certain changes to ICC’s Clearing Rules (the “Rules”)³ and related procedures to provide for the clearing of credit default index swaptions (“Index Swaptions”). The proposed rule change was published for comment in the Federal Register on July 17, 2019.⁴ On August 28, 2019, the Commission extended the period to take action on the proposed rule change until October 15, 2019.⁵ The Commission has not received any

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 Rules.

⁴ Self-Regulatory Organizations; ICE Clear Credit LLC; Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Rules, ICC End-of-Day Price Discovery Policies and Procedures, and ICC Risk Management Framework; Exchange Act Release No. 86358 (July 11, 2019); 84 FR 34220 (July 17, 2019) (“Notice”).

⁵ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating to the ICC Rules, ICC End-of-Day Price Discovery Policies and Procedures, and ICC

comments on the proposed rule change. On September 5, 2019, ICC filed Partial Amendment No. 1 to the proposed rule change.⁶ The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, “proposed rule change”) on an accelerated basis..

II. Description of the Proposed Rule Change

A. Background

The proposed rule change would amend ICC’s Rules, End-of-Day Price Discovery Policies and Procedures (the “EOD Policy”) and Risk Management Framework (the “Risk Framework”) to provide for the clearing by ICC of Index Swaptions.⁷

An Index Swaption is a contract whereby 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

Risk Management Framework; Exchange Act Release No. 86799 (Aug. 28, 2019); 84 FR 46588 (Sept. 4, 2019)

⁶ In Partial Amendment No. 1 to the proposed rule change, ICC provided additional details and analyses surrounding the proposed rule change in the form of a confidential Exhibit 3. Partial Amendment No. 1 did not make any changes to the substance of the filing or the text of the proposed rule change.

⁷ As explained in the Notice, prior to the commencement of clearing of Index Swaptions, ICC intends to adopt certain other policies and procedures in addition to this proposed rule change. ICC does not intend to commence clearing of Index Swaptions until any such policies and procedures, as well as the current proposed rule change, have been approved by the Commission or otherwise become effective. See Notice, 84 FR at 34220.

specified expiration date on specified terms.⁸ In the case of Index Swaptions that would be cleared by ICC, the underlying index credit default swap would be limited to certain CDX and iTraxx Europe 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.

B. Amendments to ICC's Rules

The proposed rule change would adopt a new Subchapter 26R of ICC's Rules, which would set out the contract terms and specifications for cleared Index Swaptions.

Rule 26R-102 would set out key definitions used for Index Swaptions, which would be generally similar to those used in the subchapters for other index Contracts cleared by ICC. Key defined terms would include "Eligible Untranching Swaption Index", which would specify the applicable series and version of a CDX or iTraxx index or sub-index underlying an Index Swaption. As with other index CDS, ICC would maintain a List of Eligible Untranching Swaption Indices, which would contain the Eligible Untranching Swaption Indices as well as the eligible expiration dates and strike prices, as well as other relevant terms, for Index Swaptions that would be accepted for clearing by ICC. Rule 26R-102 would also define the "Relevant Index Swaption Untranching Terms Supplement," (referred to herein as the "Swaption Terms Supplement"). The Swaption Terms Supplement, published by the International Swaps and Derivatives Association, Inc. ("ISDA"), would provide the standard contractual terms for index swaptions of the relevant type. These terms would be incorporated by reference into the contract terms in the Rules for a cleared Index Swaption.

⁸ The description that follows is excerpted from the Notice, 84 FR 34220.

Rule 26R-102 also would define the “Underlying Contract,” which would be the index CDS Contract into which the Index Swaption may be exercised, and the “Underlying New Trade,” which would be 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.

New Rule 26R-103 would clarify the application of certain aspects of the Rules to Index Swaptions. Specifically, it would specify that Index Swaptions would be CDS Contracts for purposes of Chapters 20 (regarding default management), 20A (regarding transfers of positions), 21 (regarding determination of credit events), and 26E (regarding restructuring credit events). Chapter 22, regarding physical settlement of CDS, would not apply to Index Swaptions. Although Index Swaptions would be physically settled, in the sense that the Index Swaption, upon exercise, would result in the parties entering into an index CDS position, the physical settlement terms for CDS Contracts in Chapter 22 of the Rules would not apply to settlement of the Index Swaption itself. Instead, new Rule 26R-317(c) would, as discussed below, specify the physical settlement terms for Index Swaptions. Finally, Rule 26R-103 would specify that once an Index Swaption has been exercised, the resulting Underlying Contract and Underlying New Trade, if any, would themselves be treated as CDS Contracts for all purposes of the Rules.

New Rule 26R-309 would require CDS Participants to use reasonable efforts not to submit for clearing an Index Swaption at a time when the Underlying Contract could not be submitted for clearing under the Rules or at a time when the CDS Participant would be under an obligation to use reasonable efforts not to submit a trade in such Underlying Contract. New Rule 26R-309 would be necessary because the Rules related

to CDS Contracts cleared by ICC impose limitations on submission of trades for clearing at certain times.⁹ Thus, ICC would not accept for clearing an Index Swaption at a time when it could not accept the Underlying Contract for clearing. As with other CDS Contracts under the Rules, a CDS Participant would also be required to notify ICC if it has submitted an Index Swaption that was not a Conforming Trade under the Rules, meaning a trade that was not submitted in accordance with, and did not meet the requirements established by, the Rules and the ICE Clear Credit Procedures.¹⁰

Rule 26R-315 would establish certain of ICC's basic contractual terms for Index Swaptions. The Rule would provide that each Index Swaption is governed by the applicable Swaption Terms Supplement, subject to the relevant provisions of Subchapter 26R of the Rules. In the case of any inconsistency between the Swaption Terms Supplement and the Rules, the Rules would govern. This approach would be consistent with the treatment of other cleared index CDS Contracts under the Rules, which rely on and incorporate their own market-standard terms supplements.

New Rule 26R-316 would address ICC's process in the event that ISDA publishes a new Swaption Terms Supplement that would apply to an Index Swaption that is already being cleared by ICC. Consistent with ICC's practice for other index CDS Contracts,¹¹ the ICC Board or its designee would determine whether Index Swaptions referencing the existing standard terms supplement would be fungible with Index Swaptions referencing

⁹ See, e.g., ICC Rule 26A-309.

¹⁰ See ICC Rule 309(g).

¹¹ See ICC Rule 26A-316(b) (CDX North America); ICC Rule 26C-316(b) (CDX Emerging Markets); ICC Rule 26F-316(b) (iTraxx Europe); ICC Rule 26J-316(b) (iTraxx Asia/Pacific).

the new standard terms supplement, and if so, ICC would, in effect make the new Swaption Terms Supplement applicable to existing Index Swaptions by updating relevant existing Index Swaptions to reference the new Swaption Terms Supplement.

New Rule 26R-317 would specify other key terms for Index Swaptions. Subsection (a) would, with respect to an Index Swaption referencing a CDX.NA index, modify the Relevant Index Swaption Standard Terms Supplement and the 2014 ISDA Credit Derivatives Definitions incorporated into the Supplement. These modifications would reflect changes ICC would make to accommodate the clearing of the Index Swaption transactions, including to incorporate ICC's procedures for determination of a Credit Event and for application of physical settlement. These modifications would be consistent with similar modifications that ICC uses for the CDX.NA index itself.¹² Subsection (b) of new Rule 26R-317 would make similar modifications with respect to an Index Swaption referencing an iTraxx Europe index.¹³ Rule 26R-317(c) would state explicitly that Index Swaptions would be physically settled in accordance with Subchapter 26R.

New Rule 26-317(d) would set out certain terms and elections under the Swaption Terms Supplement that would apply to all Index Swaptions of a particular type and underlying index. Significantly, ICC would only accept Index Swaptions that are European style, such that the option may only be exercised on the expiration date. New Rule 26-317(d) would also define ICC as the Calculation Agent, except as provided in the CDS Committee Rules in Chapter 21. This would mean that upon settlement ICE

¹² See ICC Rule 26A-317(b).

¹³ See ICC Rule 26F-317.

Clear Credit, as calculation agent, would determine the applicable settlement payment or payments (as determined under the Swaption Terms Supplement, and based on the strike adjustment amount and accrued amount thereunder) which shall be owed by the Swaption Buyer or the Swaption Seller under any exercised Index Swaption, in respect of such exercise. Finally, Rule 26-317(d) would also make inapplicable certain provisions under the Swaption Terms Supplement that would not apply to Index Swaptions.

New Rule 26-317(e) would set out the terms for an Index Swaption that must be included in the submission of an Index Swaption transaction for clearing. Specifically, the submission must identify the underlying index, trade date, expiration date, Swaption Buyer, Swaption Seller, strike price and swaption premium. The submission must also specify whether the Index Swaption is a “payer” or “call” option, in which case the Swaption Buyer, upon exercise, would be the fixed rate payer under the Underlying Contract, or a “receiver” or “put” option, in which case the Swaption Seller, upon exercise, would be the fixed rate payer under the Underlying Contract. The submission must also specify the scheduled termination date of the Underlying Contract and original notional amount of the Underlying Contract.

New Rule 26R-318 would provide procedures for exercise and assignment of Index Swaptions. The rule would provide that an Open Position in an Index Swaption may be exercised on its expiration date by the relevant Participant (or, in the case of a client position, the relevant Non-Participant Party) that is the Swaption Buyer delivering an exercise notice to ICC. New Rule 26R-318(d) would further provide that upon receipt of the exercise notice, ICC would assign the exercise notices to Open Positions of Participants that are Swaption Sellers (across both the house and customer origin

accounts) in accordance with the Exercise Procedures.¹⁴ Under new Rule 26R-318(e), such an assignment would constitute exercise of the relevant Open Position in such Index Swaption between ICE Clear Credit, as Swaption Buyer and such Swaption Seller. Moreover, the exercise of both the Open Position between the Swaption Buyer and ICE Clear Credit and the offsetting Open Position between ICE Clear Credit and the Swaption Seller would be deemed effective simultaneously at the time of such assignment, as recorded in the books and records of ICE Clear Credit. New Rule 26R-318(g) would specify that, for the avoidance of doubt, the assignment of an exercise notice does not create a direct relationship between the exercising Swaption Buyer and the assigned Swaption Seller. Rather, both such parties would continue to face ICC as clearing organization. Finally, new Rule 26R-318(f) would specify that Index Swaptions that are not validly exercised on the expiration date would expire without further obligation of any party.

New Rule 26R-319 would provide procedures for settlement of an exercised Index Swaption. New Rule 26R-319(a) would provide that upon exercise, a cleared Contract in the form of the Underlying Contract would automatically come into effect as between the exercising Swaption Buyer and ICC and an offsetting cleared Contract would automatically come into effect as between ICC and the assigned Swaption Seller. ICC, as a Calculation Agent, would determine the settlement payment or payments owed by the Swaption Buyer or the Swaption Seller in connection with the exercise. Such

¹⁴ As discussed in the Notice, ICC intends to adopt a set of Exercise Procedures that will provide further detail as to the manner in which Index Swaptions may be exercised by Swaption Buyers and in which notices of exercise will be assigned to Swaption Sellers. See Notice, 84 FR at 34221, n.5.

payments would represent a strike adjustment amount based on the strike price of the Index Swaption and an accrual amount reflecting the accrued fixed payment for the Underlying Contract through expiration. The Swaption Buyer or the Swaption Seller, as applicable, would make such payments in accordance with the terms of the relevant Index Swaption (based on the Swaption Terms Supplement).

Consistent with the terms of the Index Swaption, new Rule 26R-319(b) would require additional settlements 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. In general, such settlements would be designed so that the party in the position of the protection buyer under the Index Swaption would receive settlement for all such Credit Events as if it had held the Underlying Contract at the time of the Credit Event. These settlement amounts may include auction cash settlement amounts, fixed rate payments, and accruals with respect to such credit events. The proposed rule would also provide for an additional accrual amount, owed by the party that is in the position of fixed rate payer or floating rate payer, as applicable, to ensure consistency in economic result where the swaption expiration occurs after the relevant auction date for a Credit Event as compared to cases where expiration occurs before the auction date. New Rule 26R-319(b) would also address cases where the relevant Underlying Contract is itself subject to physical settlement under Chapter 22 of the Rules. In that case, the rule would provide for matching of Swaption Buyers and Swaption Sellers for that purpose.

New Rule 26R-319(c) would apply in the case of a relevant M(M)R Restructuring Credit Event and would provide for delivery of MP Notices (both Restructuring Credit Event Notices and Notices to Exercise Movement Option) by Swaption Buyer and

Swaption Sellers prior to expiration of the Index Swaption. Such notices would have effect with respect to the Underlying New Trade established if the Index Swaption is exercised. New Rule 26R-319(c) would also address settlement with respect to the Underlying New Trade.

Rule 26R-502 would clarify that ICC may take the following actions with respect to Index Swaptions without consulting the Risk Committee: (i) adding new eligible Strike Prices; (ii) adding new Expiration Dates for Index Swaptions; (iii) adding new series and tenors for the indices which are Underlying Contracts for Index Swaptions; and (iv) adding new eligible Scheduled Termination Dates for Underlying Contracts. In ICC's view, these actions are business-as-usual actions necessary to maintain existing cleared contracts and do not pose a material risk change to ICC. As such, consultation with ICC's Risk Committee would not be necessary for these changes.

Finally, Consistent with similar provisions for other product subchapters,¹⁵ new Rule 26R-616 would provide that actions by the Board or its designee to give effect to certain determinations of the Credit Derivatives Determinations Committee or Regional CDS Committee, such as succession events and the like, would not constitute a Contract Modification for purposes of the Rules. Thus, new Rule 26R-616 would allow ICC's Board or its designee to give effect to determinations of the Credit Derivatives Determinations Committee or Regional CDS Committee, as those determinations affect the Underlying Contracts for Index Swaptions, without complying with ICC Rule 616. ICC Rule 616 requires that ICC provide Participants notice ahead of certain Contract

¹⁵ See ICC Rule 26B-616; 26D-616; 26G-616; 26H-616; 26I-616; 26L-616; 26M-616; 26N-616; 26O-616; 26P-616; and 26Q-616.

Modifications. In ICC's view, these changes would not constitute Contract Modifications, as defined in ICC's Rules, because they are changes built into the terms of the contracts that are expected, and traded on, by market participants.

C. EOD Policy Amendments

The proposed rule change would also amend ICC's EOD Policy to incorporate Index Swaptions. The EOD Policy sets out ICC's EOD price discovery process used to determine the daily settlement prices for all cleared Contracts, based on submissions made by Participants. The proposed amendments to the EOD Policy would specify the characteristics that define a unique Index Swaption instrument for purposes of price submissions by Participants, including exercise style, underlying index, option type (put or call), expiration date, strike price and convention (price or spread), and transaction type (reflecting the Swaption Terms Supplement).

The amendments to the EOD Policy would establish a methodology for determining EOD bid-offer widths ("BOWs") for clearing-eligible Index Swaptions, which are used for establishing EOD settlement prices. Under the methodology, ICC would determine a systematic EOD BOW for each Index Swaption. The final BOW for an Index Swaption would be determined as the greater of the systematic BOW and a dynamic BOW determined on the range of a series of unique price submissions made by Participants for the particular Index Swaption (excluding certain of the largest and smallest elements), in a manner similar to that which ICC currently uses for calculating dynamic BOWs for single name CDS instruments.

The amendments to the EOD Policy also would set out price submission requirements for Participants. Under the amendments, if a Participant has a gross

notional position for any Index Swaption in any strip¹⁶ of puts or calls, the Participant must provide submissions for all clearing-eligible instruments in that strip of puts or calls and the corresponding strip of calls or puts. In addition, if an insufficient number of Participants are required to submit under this standard, ICC may require all Participants to provide relevant submissions. Finally, the amendments would establish the times that Participants are required to submit prices related to Index Swaptions and specify the required format of submissions.

The amendments would apply ICC's firm trade requirements to Index Swaptions. Under ICC's firm trade requirements, Participants are required to enter into a subset of trades generated by ICC's cross-and lock algorithm. As with other cleared products, the amendments would establish a notional limit for firm trades for Participants in affiliate groups. The amendments would set out procedures for determining the relevant firm trade days for Index Swaptions and the strips of puts and calls that are firm-trade eligible. Finally, the amendments would amend the governance provisions of the EOD Policy to make the ICC Risk Management Department responsible for performing certain functions regarding firm trades and Index Swaptions, like selecting days for firm trades in Index Swaptions.

¹⁶ The amendments would define a "strip" as the group of Index Swaptions on a given "surface" with the same expiration date (but with different strike prices). The amendments would define a "surface" as the group of Index Swaptions from a given put/call surface pair with the same option type. The amendments would define a "put/call surface pair," as the group of Index Swaptions with the same combination of underlying index, strike convention and transaction type, but differ with respect to option type, expiration date and strike price.

The amendments would also address distribution of Index Swaption prices, both to Participants and publicly. As with indices and CDS, the amendments would require that ICC publish a subset of EOD prices for Index Swaptions on its website.

The amendments would make certain other clarifications to the EOD Policy. The amendments would incorporate Index Swaptions into the table in the appendix setting out the timing for various aspects of the price submission process. The amendments would also add a reference to ICE Data Services' Credit Market Analysis services as a potential source of alternative pricing data to use if ICC determines that the EOD price discovery process has failed to determine reliable EOD prices. The amendments would also make clarifications to the existing process for index and single name CDS Contracts to distinguish it from the additional submission process for Index Swaptions. Finally, the amendments would also update defined terms and make typographical corrections.

D. Risk Framework Amendments

The proposed rule change would amend the Risk Framework to incorporate the clearing of Index Swaptions. The amendments would define Index Swaptions and identify key terms of Index Swaptions, consistent with the Rules and EOD Policy. The amendments would, for risk management purposes, define an Index Swaption instrument as a specific combination of underlying index, expiration date, strike price, option type, exercise type, currency and transaction type. The amendments would apply the ICC initial margin model to Index Swaptions and would specifically address how each component of the model would apply to Index Swaptions. For example, the amendments would apply the integrated spread response component of the margin model to Index Swaptions, based on implied forward looking Index Swaption prices. Moreover, the amendments would specify that because Index Swaptions would not be eligible for index-

single name decomposition benefits for purposes of determining the integrated spread response, they would not be subject to basis risk requirements based on decomposed index positions. The amendments would explain that certain price-based scenarios and jump to default requirements in the margin model would, in the case of Index Swaptions, be applied to delta equivalent notional amounts of the underlying index swap position. Similarly, the amendments would also apply concentration charges to Index Swaption positions, based on delta equivalent notional amounts of the underlying index.

The amendments to the Risk Framework would also remove certain outdated references and clarify certain risk management data and systems used in the margin models. For example, the amendments would delete a reference to ICC relying on its outsourcing relationship with its affiliate, the Clearing Corporation, for the technology systems and infrastructure to automate processing, reporting, and data gathering because ICC now maintains such systems in-house. The amendments would also update Appendix 2 to the Risk Framework to incorporate Index Swaptions. Appendix 2 contains a list of risk-related questions and document requests that ICC uses when evaluating an applicant for membership as a Clearing Participant.

III. Discussion and 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 such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.¹⁷ For the reasons given below, the Commission finds

¹⁷ 15 U.S.C. 78s(b)(2)(C).

that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹⁸ and Rules 17Ad-22(b)(2), 17Ad-22(d)(2), 17Ad-22(d)(4), and 17Ad-22(d)(8) thereunder.¹⁹

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, as well as 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.²⁰

As described in detail above, the proposed rule change would adopt a new Subchapter 26R to the Rules, which would identify, define, and set forth the key contract terms governing, and specifications for, cleared Index Swaptions. By doing so, Subchapter 26R would allow ICC to create the basic contractual structure of Index Swaptions, without which ICC could not clear Index Swaptions. In addition, Subchapter 26R would support ICC's clearance and settlement of Index Swaptions and the Underlying Contracts by identifying and defining the rights and obligations of CDS Participants with respect to submitting Index Swaptions for clearing, and setting forth the requirements for exercising, assigning, settling, and modifying Index Swaptions, including after the occurrence of certain credit events. For example, Subchapter 26R would define the terms for an Index Swaption that must be included in the submission of

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 17 CFR 240.17Ad-22(b)(2), (d)(2), (d)(4), and (d)(8).

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

an Index Swaption transaction for clearing; require CDS Participants to use reasonable efforts not to submit for clearing an Index Swaption at a time when the Underlying Contract could not be submitted for clearing; provide basic procedures for the exercise, assignment, settlement, and modification of Index Swaptions; and provide procedures to use for settlement in case of the occurrence of certain credit events. Finally, the Commission believes that the proposed new Subchapter 26R, in providing procedures to address the publication of a new Swaption Terms Supplement; allowing ICC to take certain business-as-usual actions with respect to Index Swaptions without consulting the Risk Committee; and providing that actions to give effect to certain determinations of the Credit Derivatives Determinations Committee or Regional CDS Committee would not constitute a Contract Modification for purposes of the Rules, would give ICC flexibility to modify Index Swaptions as necessary in response to routine changes to the Underlying Contract and thus continue clearing and settling Index Swaptions despite changes to the Underlying Contracts. Thus, the Commission believes that the proposed rule change, in general, would allow ICC to clear and settle Index Swaptions and the Underlying Contracts, which, in turn, would promote the prompt and accurate clearance and settlement of Index Swaptions.

Moreover, as discussed above, the proposed rule change would apply ICC's EOD Policy to Index Swaptions and specify how ICC generates EOD prices for Index Swaptions. Specifically, the proposed rule change would establish a methodology for determining EOD BOWs for Index Swaptions and apply the existing price submission requirements under the current EOD Policy to Index Swaptions, including a price submission window and ICC's firm trade requirements. Similarly, the proposed rule

change would apply ICC's existing margin model to Index Swaptions and specify the manner in which key aspects of the model would function with respect to Index Swaptions. Because ICC uses EOD prices and its margin model to generate margin requirements for cleared transactions, and because the proposed rule change would allow ICC to generate margin requirements for cleared Index Swaptions, the Commission believes that the proposed rule change would allow ICC to manage the risks associated with clearing Index Swaptions. The Commission believes that these risks, if not properly managed, could cause ICC to realize losses on the clearance of Index Swaptions and thereby disrupt ICC's ability to promptly and accurately clear securities transactions. Accordingly, the Commission therefore believes that the proposed rule change, in applying the EOD Policy and ICC's margin model to Index Swaptions, would promote the prompt and accurate clearance and settlement of securities transactions. Similarly, given that mismanagement of the risks associated with clearing Index Swaptions could cause ICC to realize losses on such transactions and threaten ICC's ability to operate, thereby threatening access to securities and funds in ICC's control, the Commission believes that the proposed rule change would help assure the safeguarding of securities and funds which are in the custody or control of the ICC or for which it is responsible. Finally, for both of these reasons, the Commission believes the proposed rule change would, in general, protect investors and the public interest.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the

safeguarding of securities and funds in ICC's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.²¹

B. Consistency with Rules 17Ad-22(b)(2)

Rule 17Ad-22(b)(2) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.²²

As discussed above, the proposed rule change would apply ICC's existing EOD Policy to Index Swaptions and specify the manner in which ICC would generate EOD prices for Index Swaptions, including establishing a methodology for determining EOD BOWs for Index Swaptions and applying the price submission requirements to Index Swaptions. Similarly, the proposed rule change would apply ICC's margin model to Index Swaptions and describe the manner in which components of the model would work with respect to Index Swaptions. Both of these changes would allow ICC to generate margin requirements for Participants that clear Index Swaptions, which would help to ensure that ICC uses margin requirements to limit its credit exposures to Participants that clear Index Swaptions under normal market conditions and help to ensure that ICC uses risk-based models and parameters to set margin requirements associated with Index

²¹ 15 U.S.C. 78q-1(b)(3)(F).

²² 17 CFR 240.17Ad-22(b)(2).

Swaptions. The Commission therefore finds that the proposed rule change is consistent with Rule 17Ad-22(b)(2).²³

The Commission further believes that the other changes the proposed rule change would make to the EOD Policy and the Risk Framework would help improve the operation of both. Specifically, in adding a reference to ICE Data Services' Credit Market Analysis services as a potential source of alternative pricing data to use if ICC determines that the EOD price discovery process has failed to determine reliable EOD prices, the Commission believes the proposed rule change would help to ensure that ICC has a backup source of data to use for EOD prices. Moreover, in making clarifications to the existing process for index and single name CDS Contracts to distinguish it from the additional submission process for Index Swaptions, the Commission believes the proposed rule change would help to avoid potential confusion between the two different processes. Similarly, in updating defined terms and references and making typographical corrections, the Commission believes the proposed rule change would help to ensure that the EOD Policy operates as intended, with the correct references. Likewise, by updating references to risk management data and systems in the Risk Framework, the proposed rule change would help to ensure that the Risk Framework references the correct and existing ICC risk management systems. Thus, the Commission believes these changes would help to improve the operation and use of both the EOD Policy and the Risk Framework in the clearance of Index Swaptions. Because, as discussed above, the Commission finds that the application of both of these policies to Index Swaptions is

²³ 15 U.S.C. 17Ad-22(b)(2).

consistent Rule 17Ad-22(b)(2),²⁴ the Commission therefore finds that these changes are also consistent with that Rule.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(b)(2).²⁵

C. Consistency with Rule 17Ad-22(d)(2)

Rule 17Ad-22(d)(2) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency; have procedures in place to monitor that participation requirements are met on an ongoing basis; have participation requirements that are objective and publicly disclosed; and permit fair and open access.²⁶ The Commission believes that the proposed rule change would establish participation requirements for Participants that clear Index Swaptions by applying price submission and firm trade requirements to Index Swaptions as part of the EOD pricing process, including incorporating Index Swaptions into the table in the appendix setting out the timing for various aspects of the price submission process. Similarly, the Commission believes that the proposed rule change would establish requirements for Participants that clear Index Swaptions by adding Index Swaptions to Appendix 2 to the Risk Framework, which ICC uses to evaluate an applicant for membership as a Clearing Participant. Moreover, the Commission believes that both of these requirements would be objective

²⁴ 15 U.S.C. 17Ad-22(b)(2).

²⁵ 15 U.S.C. 17Ad-22(b)(2).

²⁶ 15 U.S.C. 17Ad-22(d)(2).

and publicly disclosed, as they would be applicable to all Participants and publicly described in this proposed rule change. Similarly, the Commission believes that in requiring that ICC publish a subset of EOD prices for Index Swaptions on its website, the proposed rule change would permit fair and open access by providing non-Participants and firms looking to become Participants at ICC access to the pricing information for Index Swaptions.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(d)(2).²⁷

D. Consistency with Rule 17Ad-22(d)(4)

Rule 17Ad-22(d)(4) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures.²⁸ The Commission believes that the proposed rule change, in establishing procedures for the exercise and settlement of Index Swaptions, would identify possible operational risks in clearing Index Swaptions and minimize those risks through appropriate controls. Specifically, as discussed above, new Rule 26R-319 would provide that, upon exercise, a cleared Contract in the form of the Underlying Contract would automatically come into effect as between the exercising Swaption Buyer and ICC and an offsetting cleared Contract would automatically come into effect as between ICC and the assigned Swaption Seller. The Commission believes that this aspect of the proposed rule change would reduce the operational risks associated with

²⁷ 15 U.S.C. 17Ad-22(d)(2).

²⁸ 17 CFR 240.17Ad-22(d)(4).

clearing Index Swaptions by providing for the automatic settlement into an offsetting cleared Contract upon exercise, rather than requiring some further manual step or procedure by ICC or the Participants. Similarly, the Commission believes that, in specifying that Index Swaptions that are not validly exercised on the expiration date would expire without further obligation of any party, the proposed rule change would eliminate the potential operational risks associated with Participants attempting late exercises of Index Swaptions. Finally, in providing procedures for the exercise and assignment of Index Swaptions, the Commission believes the proposed rule change would reduce the potential operational risks associated with exercise and assignment by setting out in advance a method that a Swaption Buyer must use to exercise its Index Swaption and a method that ICC must use to assign the Swaption Buyer's position to a corresponding Swaption Seller.

Therefore, for the above reason the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(d)(4).²⁹

E. Consistency with Rule 17Ad-22(d)(8)

Rule 17Ad-22(d)(8) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of ICC's risk management procedures.³⁰

The Commission believes that the proposed rule change, in amending the governance

²⁹ 15 U.S.C. 17Ad-22(d)(4).

³⁰ 15 U.S.C. 17Ad-22(d)(8).

provisions of the EOD Policy to make the ICC Risk Management Department responsible for performing certain functions related to the firm trade requirements for Index Swaptions, would establish clear and transparent governance arrangements for Index Swaptions. The Commission also believes that, in providing that actions by the Board or its designee to give effect to certain determinations of the Credit Derivatives Determinations Committee or Regional CDS Committee would not constitute a Contract Modification for purposes of the Rules, the proposed rule change would establish clear and transparent arrangements for the Board or its designee to take such actions.

Therefore, for the above reason the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(d)(8).³¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, 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-2019-007 on the subject line.

Paper Comments:

³¹ 15 U.S.C. 17Ad-22(d)(8).

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-2019-007. 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-2019-007 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of the Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,³² to approve the proposed rule change prior to the 30th day after the date of publication of Partial Amendment No. 1 in the Federal Register. As discussed above, Partial Amendment No. 1 provides additional details and analyses surrounding ICC's proposed changes to implement clearing of Index Swaptions. By providing the additional information, Partial Amendment No. 1 provides for a more clear and comprehensive understanding of the estimated impact of the proposed rule change, which helps to improve the Commission's review of the proposed rule change for consistency with the Act.

For similar reasons as discussed above, the Commission finds that Partial Amendment No. 1 is designed to promote the prompt and accurate clearance and settlement of securities transactions, help assure the safeguarding of securities and funds which are in the custody or control of ICC, and, in general, to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.³³ Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.³⁴

³² 15 U.S.C. 78s(b)(2).

³³ 15 U.S.C. 78q-1(b)(3)(F).

³⁴ 15 U.S.C. 78s(b)(2).

VI. 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 Section 17A(b)(3)(F) of the Act³⁵ and Rules 17Ad-22(b)(2), 17Ad-22(d)(2), 17Ad-22(d)(4), and 17Ad-22(d)(8) thereunder.³⁶

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act³⁷ that the proposed rule change, as modified by Partial Amendment No. 1 (SR-ICC-2019-007), be, and hereby is, approved on an accelerated basis.³⁸

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Jill M. Peterson
Assistant Secretary

³⁵ 15 U.S.C. 78q-1(b)(3)(F).

³⁶ 17 CFR 240.17Ad-22(b)(2), (d)(2), (d)(4), and (d)(8).

³⁷ 15 U.S.C. 78s(b)(2).

³⁸ 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).

³⁹ 17 CFR 200.30-3(a)(12).