

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90505; File No. SR-ICC-2020-011)

November 24, 2020

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Clearing Rules

I. Introduction

On September 30, 2020, 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-4,² a proposed rule change to revise ICC’s Clearing Rules (the “Rules”)³ to incorporate credit default swaptions (“Index Swaptions”) into its summary assessment approach.⁴ The proposed rule change was published for comment in the Federal Register on October 16, 2020.⁵ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

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 See Notice infra note 5, 85 Fed. Reg. at 65891.

⁵ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Clearing Rules, Exchange Act Release No. 90138 (October 8, 2020); 85 Fed. Reg. 65891 (October 16, 2020) (SR-ICC-2020-011) (“Notice”).

II. Description of the Proposed Rule Change

In connection with ICC's proposed launch of the clearing of Index Swaptions, ICC is proposing to revise the Rules to incorporate Index Swaptions into its summary assessment approach, described in Rule 702(e) and Schedule 702 of the Rules.⁶ ICC has previously filed with the Commission changes to certain other policies and procedures related to the clearing of Index Swaptions (the "Swaption Rule Filings") in order to adopt or amend certain related policies and procedures in preparation for the launch of clearing of Index Swaptions.⁷ The Swaption Rule Filings describe an Index Swaption as when one party (the "Swaption Buyer") has the right (but not the obligation) to cause the other party (the "Swaption Seller") to enter into an index credit default swap transaction at a pre-determined strike price on a specified expiration date on specified terms. In the case of Index Swaptions 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. As also described in the Swaption Rule Filings, ICC would not commence clearing of Index Swaptions until all such policies and procedures have been approved by the Commission

⁶ The description herein is substantially excerpted from the Notice.

⁷ SEC Release No. 34-87297 (Oct. 15, 2019), 84 Fed. Reg. 56270 (Oct. 21, 2019) (SR-ICC-2019-007); SEC Release No. 34-89142 (June 24, 2020), 85 Fed. Reg. 39226 (June 30, 2020) (SR-ICC-2020-002); SEC Release No. 34-89436 (July 31, 2020), 85 Fed. Reg. 47827 (Aug. 6, 2020) (SR-ICC-2020-008); SEC Release No. 34-89948 (Sep. 22, 2020), 85 Fed. Reg. 60845 (Sep. 28, 2020) (SR-ICC-2020-010).

or otherwise become effective. As such, ICC filed the proposed rule change as part of ICC's larger effort to adopt the necessary policies and procedures prior to the eventual launch of the clearing of Index Options.⁸

As part of ICC's end-of-day price discovery process, ICC Clearing Participants ("CPs") are required to submit end-of-day prices for single name and index credit default swap ("CDS") Contracts in accordance with ICC Procedures. The failure of any CP to provide such price submissions constitutes a Missed Submission pursuant to Rules 404(b), 702(b) and 702(e). As an incentive against Missed Submissions, ICC has adopted a summary assessment approach described in Rule 702(e) and Schedule 702 of the Rules.⁹ In connection with ICC's proposed launch of the clearing of Index Swaptions, the proposed amendments would incorporate Index Swaptions in Rule 702(e) and update Schedule 702 of the Rules to include assessment amounts for Index Swaption Missed Submissions, in addition to the current assessment amounts for single name and index CDS Missed Submissions.

Specifically, the proposed changes to Rule 702(e)(i)(2) would specify that CPs holding a cleared interest in one or more Index Swaption Contracts sharing the same underlying index and expiration date are required to provide end-of-day prices for all Index Swaption Contracts sharing the same underlying index and expiration date. The proposed changes to Rule 702(e)(ii)(2) would specify that a CP is eligible for one waiver per calendar year for Index Swaption Missed Submissions caused by technical failures,

⁸ ICC has represented to the Commission that this proposed rule change is the last rule filing under Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) needed to change ICC's Rules to account for the clearing of Index Swaptions.

⁹ See Notice, 85 Fed. Reg. at 65891.

which conforms to one waiver per calendar year for single name Missed Submissions and one waiver per calendar year for index Missed Submissions, in each case caused by technical failures. The proposed amendment to Rule 702(e)(ii)(4) would make a related change to include Index Swaptions, along with single name and index CDS, as a type of Missed Submission that may satisfy the waiver requirements of Rule 702(e)(ii)(2).

As noted above, ICC would update current Schedule 702 to include assessment amounts for Index Swaption Missed Submissions. Specifically, the proposed revisions to Schedule 702 would establish an assessment amount of \$250 for each Index Swaption Missed Submission and a maximum assessment per day for Missed Submissions on Index Swaption instruments sharing the same underlying index (\$10,000) and for all Index Swaption instruments during one day (\$50,000). ICC's proposed changes to Schedule 702 of the Rules would also correct a typographical error with respect to single names by replacing "Submissions" with "Submission" in the current phrase "For each Missed Submissions."

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.¹⁰ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, Section

¹⁰ 15 U.S.C. 78s(b)(2)(C).

17A(b)(3)(G) of the Act, Section 17A(b)(3)(H) of the Act,¹¹ and Rule 17Ad-22(e)(6)(iv) thereunder.¹²

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.¹³

As noted above, the proposed rule change would amend ICC's summary assessment approach described in Rule 702(e) and Schedule 702 of the Rules with respect to Missed Submissions to incorporate Index Swaptions. The proposed rule change would also amend current Rule 702(e) to provide one waiver per calendar year to CPs for Index Swaption Missed Submissions caused by technical failures. The Commission believes that by amending its summary assessment approach to include Index Swaptions, ICC would enhance its ability to maintain the accuracy, integrity and effectiveness of ICC's price discovery process by incentivizing CPs to avoid Index Swaption Missed Submissions for non-technical reasons.

The Commission further believes that the proposed amendments to ICC's summary assessment approach should improve ICC's end-of-day pricing process because

¹¹ 15 U.S.C. 78q-1(b)(3)(F), 15 U.S.C. 78q-1(b)(3)(G), and 15 U.S.C. 78q-1(b)(3)(H).

¹² 17 CFR 240.17Ad-22(e)(6)(iv).

¹³ 15 U.S.C. 78q-1(b)(3)(F).

they should provide ICC a means of ensuring that its CPs submit complete prices for Index Swaptions. Consequently, the Commission believes that the proposed changes should promote the prompt and accurate clearance and settlement of transactions by ICC. The Commission further believes that these improvements, in turn, should enhance ICC's ability to manage the risks associated with clearing Index Swaptions, including the calculation and collection of margin requirements that will account for Index Swaptions as part of its overall risk-based margin system and risk management processes which rely, in part, on the end-of-day prices submitted by ICC's CPs.¹⁴ Moreover, the Commission believes these risks, if mismanaged, could threaten ICC's ability to operate and therefore its ability to clear and settle transactions and safeguard funds. As a result, the Commission believes that the proposed changes should promote 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.

Therefore, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.¹⁵

¹⁴ See SEC Release No. 34-82960 (Mar. 28, 2018), 83 Fed. Reg. 14300, 14302 (Apr. 3, 2018) (SR-ICC-2018-002) (finding improvements to ICC's end-of-day pricing process would improve "ICC's risk management processes related to the end-of-day pricing process, including the calculation and collection of certain margin requirements" and would "promote the prompt and accurate clearance and settlement of the products cleared by ICC, and . . . enhance 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").

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

B. Consistency with Section 17A(b)(3)(G) of the Act

Section 17A(b)(3)(G) of the Act requires, among other things, that ICC's rules provide that CPs shall be appropriately disciplined for violation of any provision of ICC's rules by fine or other fitting sanction.¹⁶ As noted above, the proposed rule change would amend current Rule 702(e) and Schedule 702 of the Rules to impose an assessment amount on any CP that violates the ICC Procedures for submitting end-of-day prices with respect to Index Swaption Contracts. The Commission believes that this aspect of the proposed rule change should be an appropriate form of discipline for CPs that violate such price submission procedures for any reason other than technical failures that meet the waiver requirements of Rule 702(e)(ii)(2). The Commission also believes that without an appropriate sanction that would deter CPs from committing Index Swaption Missed Submission Violations, the accuracy, integrity and reliability of ICC's end-of-day price discovery process could be impaired. Therefore, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(G) of the Act.¹⁷

C. Consistency with Section 17A(b)(3)(H) of the Act

Section 17A(b)(3)(H) of the Act¹⁸ requires, among other things, that ICC's rules, in general, provide a fair procedure with respect to the disciplining of participants. As noted above, the proposed rule change would provide a generally applicable process for requesting and reviewing waivers of the summary assessment amount for Index Swaption Missed Submissions. This proposed process is consistent with the processes currently set

¹⁶ 15 U.S.C. 78q-1(b)(3)(G).

¹⁷ 15 U.S.C. 78q-1(b)(3)(G).

¹⁸ 15 U.S.C. 78q-1(b)(3)(H).

forth in Rule 702(e) for requesting and reviewing waivers for single name Missed Submissions and index Missed Submissions, which is another indication of procedural fairness and consistency with respect to disciplining CPs for Missed Submissions across all three types of CDS Contracts after ICC's proposed launch of clearing Index Swaptions. For these reasons, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(H) of the Act.¹⁹

D. Consistency with Rule 17Ad-22(e)(6)(iv) under the Act

Rule 17Ad-22(e)(6)(iv)²⁰ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to 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. The Commission believes the proposed rule change is reasonably designed to deter the occurrence of Index Swaption Missed Submissions that would undermine ICC's ability to maintain the integrity and effectiveness of its end-of-day price discovery process for the provision of reliable prices, which could, in turn, be used to enhance ICC's ability to establish and maintain risk-based margin requirements

¹⁹ 15 U.S.C. 78q-1(b)(3)(H). In addition, the Commission believes that ICC's proposed correction of a typographical error in Schedule 702 of the Rules with respect to single names will enhance the clarity and procedural fairness of ICC's assessment approach with respect to each single name Missed Submission.

²⁰ 17 CFR 240.17Ad-22(e)(6)(iv).

which rely, in part, on the end-of-day prices provided by CPs. The Commission believes that the proposed rule change is therefore consistent with Rule 17Ad-22(e)(6)(iv).²¹

IV. 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 Act, Section 17A(b)(3)(G) of the Act, Section 17A(b)(3)(H) of the Act²² and Rule 17Ad-22(e)(6)(iv) thereunder.²³

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act²⁴ that the proposed rule change (SR-ICC-2020-011), be, and hereby is, approved.²⁵

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

J. Matthew DeLesDernier
Assistant Secretary

²¹ 17 CFR 240.17Ad-22(e)(6)(iv).

²² 15 U.S.C. 78q-1(b)(3)(F), 15 U.S.C. 78q-1(b)(3)(G) and 15 U.S.C. 78q-1(b)(3)(H).

²³ 17 CFR 240.17Ad-22(e)(6)(iv).

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 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).

²⁶ 17 CFR 200.30-3(a)(12).