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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89436; File No. SR-ICC-2020-008]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Exercise Procedures and ICC Clearing Rules

July 31, 2020.

I. Introduction

On June 3, 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 thereunder,² a proposed rule change to formalize and adopt the ICC Exercise Procedures (the “Procedures”) and a related update to the ICC Clearing Rules (the “Rules”) to accompany the clearing of options on index credit default swaps (“Index Swaptions”).³ The proposed rule change was published for comment in the Federal Register on June 22, 2020.⁴ 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 Procedures or the Rules, as applicable.

⁴ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Exercise Procedures and ICC Clearing Rules, Exchange Act Release No. 89072 (June 16, 2020); 85 Fed. Reg. 37483 (June 22, 2020) (SR-ICC-2020-008) (“Notice”).

II. Description of the Proposed Rule Change

The proposed rule change would formalize and adopt the Procedures and make a related amendment to the Rules in connection with ICC's proposed clearing of Index Swaptions. ICC has previously filed with the Commission changes to certain other policies and procedures related to the clearing of Index Swaptions on June 28, 2019⁵ and January 14, 2020.⁶ As described in those filings, pursuant to an Index Swaption, 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. As also described in those filings, ICC intends to adopt certain related policies and procedures in preparation for the launch of clearing of Index Swaptions, including those set out in this proposed rule change, and would not commence clearing of Index Swaptions until all such policies and procedures have been approved by the Commission or otherwise become effective. As such, ICC filed the proposed rule change to formalize the Procedures and make the related change to the Rules effective as part of ICC's larger effort to adopt the necessary policies and procedures to the eventual launch of the clearing of Index Swaptions.⁷

⁵ 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, Exchange Act Release No. 87297 (Oct. 15, 2019); 84 Fed. Reg. 56270 (Oct. 21, 2019) (SR-ICC-2019-007) ("2019 Swaption Rule Amendments").

⁶ Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Risk Management Model Description, ICC Stress Testing Framework, ICC Liquidity Risk Management Framework, ICC Back-Testing Framework, and ICC Risk Parameter Setting and Review Policy, Exchange Act Release No. 89142 (June 24, 2020); 85 Fed. Reg. 39226 (June 30, 2020) (SR-ICC-2020-002).

⁷ Notice, 85 Fed. Reg. at 37483.

A. The Procedures

The Procedures would supplement the provisions of Subchapter 26R of the Rules⁸ with respect to Index Swaptions and provide further detail as to (i) which Swaption Buyers may exercise; (ii) how an Index Swaption is exercised, including detail as to the amount being exercised, circumstances in which an exercise is valid and irrevocable or invalid and rejected, and limitations ICC may impose upon exercise; (iii) how ICC would assign exercised positions to Swaptions Sellers; and (iv) what steps ICC would take in response to systems failures that inhibit ICC from accepting exercises and communications failures that inhibit a Swaption Buyer from exercising an Index Swaption.

i. Who May Exercise

First, the Procedures would specify who is authorized to exercise an Index Swaption. Under the Procedures, a Swaption Buyer that is a Clearing Participant owning an Index Swaption in its house account would be permitted to exercise that Index Swaption, and a Swaption Buyer that is a non-participant client of a Clearing Participant owning an Index Swaption carried in the Clearing Participant's Client Origin Account (i.e., the Clearing Participant's client account) would be able to exercise that Index Swaption (each an "Exercising Party"). The Procedures would not permit a Clearing Participant to exercise on behalf of a non-participant client. Rather, the Procedures would permit only a non-participant client to exercise its Index Swaption. However, in the event of a default or termination event with respect to a non-participant for which it carries an Index Swaption, the Procedures would permit a Clearing Participant to (i)

⁸ ICC adopted Subchapter 26R of the Rules in a prior rule filing related to the clearing of Index Swaptions. See 2019 Swaption Rule Amendments, 84 Fed. Reg. at 56270.

exercise such Index Swaption on behalf of the non-participant party for the purpose of liquidating or closing out such position, or (ii) convert such Index Swaption into a position in the Clearing Participant's house account, which is consistent with existing ICC Rule 304. Finally, the Procedures would require a Clearing Participant to obtain the agreement of each non-participant party for which it carries an open position in Index Swaptions to the provisions of the Rules and the Procedures applicable to Index Swaptions.

ii. How to Exercise

Next, the Procedures would specify the process for exercising an Index Swaption. To exercise an Index Swaption, the Exercising Party would deliver an exercise notice to ICC using an electronic system known as the Exercise System during the Exercise Period that specifies the notional amount being exercised (the "Exercised Notional Amount"). Under the Procedures, the Exercise Period would be the time period during which an Exercising Party may deliver an exercise notice to ICC, i.e., 9:00 AM to 11:00 AM New York time for an Index Swaption referencing a CDX.NA index, and 9:00 AM to 4:00 PM London time for an Index Swaption referencing an iTraxx Europe index.

With respect to the amount that an Exercising Party may exercise, the Procedures would provide that an open position may be exercised in whole or part. The Procedures would provide that ICC may elect to require a partial exercise be in a specified notional amount, which is designated as the Exercise Block. If ICC requires a specific notional amount as the Exercise Block, an Exercising Party must make any partial exercise in that notional amount, or in an integer multiple thereof. If ICC does not require any specific notional amount as the Exercise Block, the Exercise Block would be 0.01 in the currency of denomination. If an Exercising Party submits an exercise notice with an Exercised Notional Amount less than the notional amount of the Index Swaption, the Procedures would permit the Exercising Party to submit during the

Exercise Period a subsequent exercise notice increasing the Exercised Notional Amount, but the Procedures would not permit an Exercising Party to reduce the Exercised Notional Amount of an exercise notice.

The Procedures also would specify the circumstances in which an exercise notice would be treated as irrevocable. Once an exercise notice is submitted to ICC during the Exercise Period, it would be irrevocable and binding on the Exercising Party. ICC will then consider whether to validate the Exercise Notice, as discussed further below, and if it is validated, it would then be accepted by ICC and become binding on ICC and the Exercising Party (and, in the case of a non-participant, its Clearing Participant). The Procedures would also allow ICC to establish a pre-exercise notification period during which an Exercising Party may submit, modify, or withdraw a preliminary exercise notice. If an Exercising Party submitted a preliminary exercise notice but does not submit another exercise notice or withdraw the preliminary exercise notice, then the Procedures would treat the Exercising Party as having submitted an exercise notice with the Exercised Notional Amount specified under such preliminary notice.

If ICC rejects an exercise notice as not valid, it would inform the submitting party, who may resubmit a corrected exercise notice within the Exercise Period. Under the Procedures, ICC would deem a Swaption Exercise Notice invalid if it has (i) an Exercised Notional Amount of less than zero, (ii) an Exercised Notional Amount greater than the notional amount of the Index Swaption, or (iii) an Exercised Notional Amount less than the notional amount of the Index Swaption and not an integer multiple of the Exercise Block.

The Procedures would further provide that ICC may impose limitations on the speed, frequency, and notional amounts in which an Index Option may be exercised at certain times during the Exercise Period. Any attempted exercise in violation of these limitations would be

rejected. The Procedures would also state that ICC would not be responsible for any failure or inability of a participant or non-participant party to exercise any Index Swaption, instead providing that each Exercising Party would be responsible for monitoring submission requirements, exercise limitations, and pertinent deadlines.

iii. Assignment of Exercised Positions

The Procedures also would explain how ICC would assign exercised positions of Index Swaptions. First, the Procedures would set forth ICC's process of netting all open positions in an expiring Index Swaption on the business day prior to the expiration date of an Index Swaption. Additionally, the Procedures would allow, but not obligate, ICC to estimate and provide the notional amount that it would assign to each open position in an Index Swaption of a Swaption Seller during the Exercise Period. These estimates would be purely for informational purposes and would not be binding on ICC.

At the conclusion of the Exercise Period, ICC would determine the final assignments to open positions in Index Swaptions of Swaption Sellers and notify participants accordingly. The Procedures would specify that ICC would make assignments across all open positions of participants that are Swaption Sellers in the relevant Index Swaptions. ICC would make final assignments proportionally based on the notional amount of each open position of a Swaption Seller, relative to the total notional amount of all open positions of Swaption Sellers in a particular Index Swaption. Once issued, the final assignments would constitute ICC's exercise as Swaption Buyer of the Index Swaption held by a Swaption Seller, and ICC would not be required to provide any further notice of such exercise.

iv. System and Communications Failures

The Procedures also would describe in detail what steps ICC would take in the event of technical issues disrupting the clearing of Index Swaptions and the processing of exercise

notices. The Procedures would first define an Exercise System Failure as any failure of the Exercise System to be fully operational during the 45-minute period prior to the end of the Exercise Period or any other circumstance in which ICC determines that it is unable to process Swaption Exercise Notices in a timely manner. In case of an Exercise System Failure, the Procedures would require that ICC give notice and, at ICC's election: (i) cancel and reschedule the Exercise Period, (ii) determine that automatic exercise will apply, and/or (iii) take such other action as ICC determines appropriate to permit Exercising Parties to submit exercise notices and to permit ICC to assign such notices. The Procedures would further specify that if automatic exercise applies under the system failure provisions, ICC would automatically exercise any open positions determined by ICC to be in the money.⁹

Similarly, the Procedures would specify the steps ICC would take in response to an Exercising Party's inability to submit notices to the Exercise System. Where an Exercising Party is affected by a significant communications or technological failure resulting in it being impossible or impracticable for the Exercising Party to deliver all, or substantially all, of its exercise notices electronically through the Exercise System (a "Party Communication Failure"), and there is no Exercise System Failure, the Procedures would require that ICC take one of two steps. ICC could either (i) follow the normal process outlined in the Procedures for accepting exercise notices and assigning exercise notices to open positions described above notwithstanding such Party Communication Failure or (ii) take actions that it deems appropriate to allow the

⁹ The Procedures would explain that ICC would determine whether an open position is in the money based on the average of the end-of-day price of the underlying CDS Contract on the preceding Business Day and the end-of-day price of the underlying CDS Contract on the Expiration Date.

Exercising Party to effectively submit exercise notices and to allow ICC to assign such exercise notices to other participants.

B. Rule Amendments

Finally, ICC also proposes to amend ICC Rule 304 related to offsets to incorporate a reference to the Procedures. Rule 304 describes ICC's ability to net a Clearing Participant's trades that constitute opposite positions in a single Contract that are identical in all material respects. The proposed rule change would not change the substance of Rule 304, but it would amend Rule 304(a) to clarify that netting of applicable offsetting positions in Index Swaptions would be subject to any provisions in the Procedures.

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 Act¹¹ and Rules 17Ad-22(e)(1) and 17Ad-22(e)(17)(i) and (ii).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

¹⁰ 15 U.S.C. 78s(b)(2)(C).

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 17 CFR 240.17Ad-22(e)(1), (e)(17)(i) and (ii).

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

The Commission believes that the Procedures generally should facilitate the exercise of Index Swaptions and, therefore, the clearance and settlement of index credit swaps that would result from such exercise by enabling an electronic notice system for exercising Index Swaptions. In particular, specifying exactly who may submit exercise notices for Swaptions and requiring a Clearing Participant to obtain the agreement of each customer for which it carries an Index Swaption to the Rules and the Procedures, as discussed in Part II.A.i above, should establish clear standards for determining which Swaption Buyers may exercise Index Swaptions, thereby helping to reduce any possible confusion in the exercise process. Similarly, providing a process for how an Index Swaption is exercised, as discussed in Part II.A.ii above, including preliminary exercise notices, partial exercises, and specifying when an exercise is valid and binding, should establish a clear and reliable process for exercising Index Swaptions and for determining the validity and finality of an exercise.

Moreover, identifying how ICC would assign exercised positions to Swaption Sellers, as discussed in Part II.A.iii above, including providing a formal and clear method for determining the final assignment of open positions to Swaption Sellers and requiring that ICC determine all final assignments of open positions in the accounts of Swaption Sellers proportionally, should provide a transparent and predictable process for assignment thereby allowing Swaption Buyers and Swaption Sellers to anticipate and prepare for assignments. Finally, explaining the steps that

¹³ 15 U.S.C. 78q-1(b)(3)(F).

ICC would take in the event of an Exercise System Failure and Party Communication Failure, as discussed in Part II.A.iv above, should provide a backup process that would allow ICC and Clearing Participants to continue exercising Index Swaptions in case of such failures, thereby further increasing the adaptability and reliability of the exercise process.

Thus, the Commission believes that these aspects of the proposed rule change, by establishing a clear, transparent, predictable, and reliable process for exercising Index Swaptions through the Procedures, should facilitate the exercise of Index Swaptions and, in turn, the clearance and settlement of index credit default swaps that would result from such exercise.

For similar reasons, the Commission believes that amending Rule 304 related to offsets to incorporate a reference to the Procedures, as discussed in Part II.B above, should reduce any possible confusion in applying Rule 304 to Index Swaptions by clarifying that netting of applicable offsetting positions in Index Swaptions would be subject to any provisions in the Procedures, thereby further facilitating the exercise of Index Swaptions and, therefore, the clearance and settlement of index credit default swaps.

Finally, the Commission believes that the Procedures should also assure the safeguarding of securities and funds in ICC's custody or control or for which it is responsible. Specifically, the Commission believes that identifying certain exercise notices as invalid that have obvious errors (e.g., an Exercise Notional Amount of less than zero), as described in Part II.A.ii above, should help to protect Exercising Parties from losses resulting from erroneous exercise notices. Similarly, cancelling and rescheduling the Exercise Period or automatically assigning Open Positions that are in the money during an Exercise System Failure should help to protect the positions of Exercising Parties that are in the money and allow those Exercising Parties to benefit from such positions. By allowing Exercising Parties to avoid losses and to benefit from in the

money positions in the event of an Exercise System Failure, the Commission believes the Procedures should help safeguard Index Swaptions cleared and exercised at ICC and, therefore, should assure the safeguarding of securities or funds in ICC's custody or control or for which it is responsible.

Therefore, the Commission finds that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICC's custody and control or for which it is responsible, consistent with the Section 17A(b)(3)(F) of the Act.¹⁴

B. Consistency with Rule 17Ad-22(e)(1)

Rule 17Ad-22(e)(1) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.¹⁵ As discussed above, the Commission believes that the Procedures should provide clear guidance for ICC's clearance of Index Swaption by ensuring the accuracy of the exercise process, harmonizing the Procedures with existing ICC rules, and creating clear and transparent rules for determining legal liability. Similarly, in determining certain exercise notices to be invalid that have obvious errors, as described above, the Commission believes the Procedures should provide for a clear basis for the rejection of exercise notices. Additionally, in adding a reference to the Procedures to Rule 304, the Commission believes the proposed rule change should help to ensure that ICC's Rules and the Procedures are consistent with each other and should help to foreclose

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 17 CFR 240.17Ad-22(e)(1)

any opportunity for conflicting interpretations. Finally, the Commission believes the Procedures should clarify potential legal liability by specifying that ICC would not be responsible for any failure of a party to exercise a Swaption and that Exercising Parties would be responsible for tracking deadlines and ensuring that they comply with all requirements in the submission of exercise notices.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(1).¹⁶

C. Consistency with Rules 17Ad-22(e)(17)(i) and (ii)

Rules 17Ad-22(e)(17)(i) and (ii) require that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to manage its operational risks by (i) identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls, and (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity.¹⁷ The Commission believes that by identifying certain exercise notices as invalid that have obvious errors, as described above, the Procedures should provide appropriate controls to mitigate the operational risk associated with erroneous exercise notices. Similarly, the Commission believes that by identifying the actions that ICC would take during an Exercise System Failure or Party Communication Failure, such as instituting automatic assignments and allowing ICC to permit an Exercising Party to submit exercise notices during a Party Communication Failure, the proposed rule change should allow the exercise and

¹⁶ 17 CFR 240.17Ad-22(e)(1).

¹⁷ 15 U.S.C. 17Ad-22(e)(17)(i) and (ii).

assignment of Index Swaptions to continue even during such failures, and thereby should help to ensure that the Exercise System has a high degree of resiliency and operational reliability.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(17)(i) and (ii).¹⁸

D. 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 Act¹⁹ and Rules 17Ad-22(e)(1) and 17Ad-22(e)(17)(i) and (ii).²⁰

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act²¹ that the proposed rule change (SR-ICC-2020-008) be, and hereby is, approved.²²

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

J. Matthew DeLesDernier,

Assistant Secretary.

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¹⁸ 15 U.S.C. 17Ad-22(e)(17)(i) and (ii).

¹⁹ 15 U.S.C. 78q-1(b)(3)(F).

²⁰ 17 CFR 240.17Ad-22(e)(1), (e)(17)(i) and (ii).

²¹ 15 U.S.C. 78s(b)(2).

²² 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).

²³ 17 CFR 200.30-3(a)(12).