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SECURITIES AND EXCHANGE COMMISSION
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Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC End-of-Day Price Discovery Policies and Procedures

June 16, 2021.

I. Introduction

On April 23, 2021, 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 revise and update ICC’s End-of-Day Price Discovery Policies and Procedures (the “Pricing Policy”). The Pricing Policy formalizes ICC’s end-of-day (“EOD”) price discovery process that provides prices for cleared credit default swap (“CDS”) contracts based on submissions from ICC’s Clearing Participants.³ The proposed rule change was published for comment in the Federal Register on May 6, 2021.⁴ 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 Pricing Policy.

⁴ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC End-of-Day Price Discovery Policies and Procedures, Exchange Act Release No. 91733 (April 30, 2021); 86 Fed. Reg. 24425 (May 6, 2021) (SR-ICC-2021-013) (“Notice”).

II. Description of the Proposed Rule Change

ICC proposes updates related to firm trade obligations and certain clarifications under the Pricing Policy.⁵ As part of ICC's current EOD price discovery process, ICC Clearing Participants ("CPs") are required to submit daily EOD prices for cleared CDS instruments related to their open positions at ICC in accordance with the Pricing Policy. To encourage CPs to provide the best possible EOD submissions, ICC selects a subset of the potential trades generated and designates them as firm trades, which ICC then enters CPs into as cleared transactions. ICC selects specific dates on which it can require CPs to execute firm trades ("firm trade days"). For each firm trade day, ICC specifies the instruments that may become firm-trade eligible, subject to certain specified criteria. As described in more detail below, ICC proposes additional criteria in the Pricing Policy for EOD firm trades with the express purpose of maintaining the robustness of the established price discovery process and ensuring that on-market firm trades (*i.e.*, firm trades resulting from price submissions close to EOD levels that reflect market expectations and thus do not provide any value-additive market information) do not incentivize CPs to correct their outlying submissions (*i.e.*, off-market price submissions outside the proposed EOD range).⁶ By subjecting potential trades to its proposed new criteria for designating firm trades, ICC would avoid creating a high number of firm trades around its EOD levels that may unnecessarily introduce operational risks and inefficiencies into ICC's EOD price discovery process.

Specifically, ICC proposes to amend Section 2.4.1 of the Pricing Policy (Selecting Firm-Trade Days and Firm-Trade Eligible Instruments) by adding a new subsection (d) (Trade Price Deviation Constraint) to Section 2.4.1. As proposed, new Section 2.4.1.d of

⁵ The description herein is substantially excerpted from the Notice.

⁶ Notice, 86 Fed. Reg. at 24426.

the Pricing Policy would incorporate additional criteria that must be met for ICC to generate firm trades, which ICC refers to as the trade price deviation constraint (the “constraint”). In addition to new subsection (d), the proposed rule change would add references to the constraint throughout the existing subsections of Section 2.4.1, specifically in subsection (a) with respect to firm trade days for index instruments, subsection (b) with respect to firm trade days for single name instruments, and subsection (c) with respect to firm trade days for index option instruments. The proposed rule change would describe the constraint in subsection (d) of Section 2.4.1 as follows. Under the proposed constraint, ICC would avoid creating a high number of trades around its EOD levels by not designating potential trades as firm trades if the magnitude of the hypothetical profit/loss is smaller in magnitude than the absolute value of the difference between the EOD level and either the bid price or offer price. To achieve the stated purpose of the constraint, ICC would only designate a potential trade as a firm trade if the trade level fell outside the EOD level plus/minus one half the EOD bid-offer width (“BOW”) for the given instrument. Such constraint would not apply when the potential firm trade is formed by crossing two outlying submission trades.

With respect to credit default index swaptions (“Index Options”), ICC proposes additional language in amended subsection 2.4.1.c (Index Option Firm Trade Days) concerning the designation of a potential trade as a firm trade by subjecting strips of puts and/or calls to the CP open interest and ICC open interest requirements. The Pricing Policy currently incorporates similar open interest requirements for indices and single names. Under the proposed CP open interest requirement in amended subsection 2.4.1.c, for ICC to designate a potential trade as a firm trade, both parties must have a cleared open interest, as of the designated times, in one or more Index Option instrument sharing the same underlying index instrument, expiration date, strike convention, exercise style and transaction type. Under the proposed ICC open interest requirement, ICC would only

designate a potential trade in a given Index Option instrument as a firm trade if ICC has a cleared open interest in that instrument.

In addition, ICC proposes several clarifications to the Pricing Policy. In Section 2.2.2 (Non-Submission Assessments), ICC proposes to abbreviate the term “ICC Board of Managers” to “Board.” In Section 2.6 (CP’s Use of Third-Party Providers), ICC proposes revisions to clarify the circumstances under which a CP may participate in the EOD price discovery process on behalf of another CP. Section 2.6 currently provides that, subject to the prior consent of ICC, a CP may designate another CP to participate in the EOD price discovery process on its behalf. Amended Section 2.6 would remove ICC’s prior consent and specify that a CP “may allow an affiliated CP (CP B) to participate in the EOD price discovery process on its behalf.” In Section 3 (Governance), ICC proposes to memorialize its existing practice by adding a new sentence stating that the Pricing Policy document is subject to review by the Risk Committee and review and approval by the Board at least annually.

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.⁷ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act and Rules 17Ad-22(e)(2)(i) and (v)⁸ and 17Ad-22(e)(6)(iv) thereunder.⁹

⁷ 15 U.S.C. 78s(b)(2)(C).

⁸ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

⁹ 17 CFR 240.17Ad-22(e)(6)(iv).

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.¹⁰

As noted above, the proposed rule change would amend Section 2.4.1 of the Pricing Policy by adding new subsection (d) to incorporate a new trade price deviation constraint as additional criteria that must be met for the generation of firm trades for each type of cleared CDS instrument at ICC and to amend the existing subsections of Section 2.4.1 to include references to the constraint where appropriate; namely, index instruments or indices in subsection (a), single name instruments in subsection (b), and Index Options in subsection (c). The Commission believes that by amending its Pricing Policy to include the proposed constraint in subsection (d) as described above, ICC would enhance its ability to maintain the accuracy, integrity, and effectiveness of the EOD price discovery process by not designating potential trades as firm trades if the magnitude of the hypothetical profit/loss is smaller in magnitude than the absolute value of the difference between the EOD level and either the bid price or offer price. This in turn could incentivize CPs to make EOD price submissions that help ICC maintain the robustness of its price discovery process and help ensure that on-market firm trades do not incentivize CPs to correct their outlying submissions. By subjecting potential trades to the proposed constraint, ICC would promote the prompt and accurate clearance and settlement of CDS contracts by avoiding the creation of an unnecessarily high number of

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

firm trades around its EOD levels that could increase operational risks and inefficiencies in ICC's EOD price discovery process.

The Commission also believes that the proposed amendments to subsection 2.4.1.c (Index Option Firm Trade Days), as described above, would ensure that the firm trade obligations for Index Options are subject to similar CP open interest and ICC open interest requirements as those that currently apply to indices and single names. These aspects of the proposed rule change should further enhance the consistency and integrity of ICC's EOD price discovery process across all three types of CDS instruments that ICC clears. Consequently, the Commission believes that all of the proposed changes to Section 2.4.1 should promote the prompt and accurate clearance and settlement of CDS transactions by ICC.

As noted above, ICC proposes other revisions to clarify that a CP may allow an affiliated CP to participate in the EOD price discovery process on its behalf without ICC's prior consent, to memorialize that the Pricing Policy is subject to review by the Risk Committee and review and approval by the Board at least annually, and to include the shorthand reference to the "Board" instead of the longer reference to the ICC Board of Managers in the Pricing Policy document. The Commission finds that these proposed drafting clarifications and improvements would enhance the clarity, transparency, and readability of the Pricing Policy for ICC management, employees, and CPs that, in turn, should help them understand their respective authorities, rights, and obligations regarding ICC's EOD price discovery process and its role in the clearance and settlement of CDS transactions.

The Commission believes that the proposed changes, taken as a whole, should enhance ICC's ability to manage the overall EOD price discovery process and the risks of clearing CDS instruments, including the calculation and collection of margin requirements that will account for each type of specific instrument as part of its overall

risk-based margin system and risk management processes which rely, in part, on the EOD prices submitted by ICC's CPs.¹¹ 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 these 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.¹²

B. Consistency with Rule 17Ad-22(e)(2)(i) and (v) under the Act

Rules 17Ad-22(e)(2)(i) and (v)¹³ require each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility, respectively. As noted above, the proposed amendments to Section 3 (Governance) would memorialize that the Pricing Policy is subject to review by the Risk Committee and review and approval by ICC's Board of Managers at least annually. The Commission believes this aspect of the proposed rule change would improve the clarity and transparency of the Pricing Policy document and its governance processes by specifying relevant roles and lines of

¹¹ 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").

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

responsibility within ICC. The Commission believes that the proposed rule change is therefore consistent with Rules 17Ad-22(e)(2)(i) and (v).¹⁴

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

Rule 17Ad-22(e)(6)(iv)¹⁵ 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 changes to Section 2.4.1 to incorporate the proposed constraint in the firm trade provisions governing each type of cleared CDS instrument should help ICC manage the quality and quantity of EOD price submissions from CPs by only designating a potential trade as a firm trade if the trade level falls outside the proposed EOD range for the given CDS instrument. This, in turn, should help ICC establish and maintain accurate margin requirements that will account for the risks posed by each type of CDS instrument as part of its overall risk-based margin system and risk management processes.

Further, the proposed changes to subsection 2.4.1.c that would designate a potential trade as a firm trade by subjecting strips of puts and/or calls to both the CP open interest and ICC open interest requirements would help ensure that the firm trade obligations for Index Options are subject to similar open interest requirements as those that currently apply to indices and single names. The Commission believes these proposed changes should help ICC maintain the integrity and effectiveness of its EOD price discovery process for the provision of reliable prices for Index Options, which

¹⁴ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

¹⁵ 17 CFR 240.17Ad-22(e)(6)(iv).

could, in turn, be used to further enhance ICC's ability to establish and maintain risk-based margin requirements for such instruments which rely, in part, on the EOD prices provided by CPs. The Commission believes that the proposed rule change is therefore consistent with Rule 17Ad-22(e)(6)(iv).¹⁶

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 and Rules 17Ad-22(e)(2)(i) and (v) and 17Ad-22(e)(6)(iv) thereunder.¹⁷

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁸ that the proposed rule change (SR-ICC-2021-013), be, and hereby is, approved.¹⁹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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¹⁶ 17 CFR 240.17Ad-22(e)(6)(iv).

¹⁷ 17 CFR 240.17Ad-22(e)(6)(iv).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 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).

²⁰ 17 CFR 200.30-3(a)(12).