

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94784; File No. SR-ICC-2022-005)

April 22, 2022

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the ICC Clearing Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 13, 2022, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II, which Items have been prepared primarily by ICC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to implement certain amendments to the ICC Clearing Rules (the “Rules”) relating to implementation of Russia Sanctions (defined below).

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change,

¹ 15 U.S.C. 78s(b)(1)

² 17 CFR 240.19b-4.

security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item III below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed changes is to modify certain provisions of the Rules applicable to cleared CDS contracts (or components thereof) for which the Russian Federation is a reference entity, in light of the sanctions imposed by Directive 1A of February 22, 2022 (Prohibitions Related to Certain Sovereign Debt of the Russian Federation) under Executive Order 14024 of April 21, 2021 (Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation³) (together, the “Executive Order”) and related implementing actions by the U.S. Treasury Department Office of Foreign Asset Control (“OFAC”), as well as similar sanctions imposed by sanctions authorities in Canada, the European Union, Japan, Switzerland and the United Kingdom (collectively, the “Russia Sanctions”).

The amendments will incorporate in the terms and conditions for such contracts the Additional Provisions for Certain Russian Entities: Excluded Obligations and Excluded Deliverable Obligations, published by the International Swaps and Derivatives Association, Inc. (“ISDA”) on March 25, 2022 (the “Russia Additional Provisions”). Consistent with the approach expected to be taken throughout the cleared and uncleared CDS market, ICE Clear Credit will make the Russia Additional Provisions applicable to

³ 86 Fed. Reg. 20249 (April 15, 2021).

relevant CDS contracts cleared by ICE Clear Credit beginning on the industry-wide implementation date (currently expected to be on or around April 25, 2022 (the “Additional Provisions Effective Date”)). Accordingly, the amendments to the Rules will define the Additional Provisions Effective Date as April 25, 2022, or such later date as may be designated by ICE Clear Credit Circular.

Among other provisions, the Russia Sanctions prohibit secondary market transactions in or relating to certain bonds issued by the Russian Federation (“Restricted Debt”). The Russia Additional Provisions implement this prohibition by excluding Russia government bonds that are Restricted Debt from being “Obligations” or “Deliverable Obligations” under the terms of a CDS contract. As such, credit events with respect to such Restricted Debt could not be used to trigger credit protection under a CDS contract, and such Restricted Debt could not be used in settlement of a CDS contract. Pursuant to the terms of the Russia Additional Provisions, these limitations would cease to apply at such time as no relevant sanctions apply to secondary trading in the relevant Restricted Debt.

ICE Clear Credit understands, through discussions with market participants, that market participants generally are expected to adhere to a protocol implementing the Russia Additional Provisions for existing contracts in the uncleared CDS market, effective as of the Additional Provisions Effective Date. In an effort to maintain consistency across the CDS market, ICE Clear Credit plans to implement the amendments discussed herein as of the same time.

ICE Clear Credit is proposing to amend its Rules to incorporate the Russia Additional Provisions into existing Contracts. ICE Clear Credit would amend Rule 26C-

316, which applies to CDX.EM Contracts, an index CDS contract for which Russia may be an index component. New subsection (f) would provide that all open positions in CDX.EM Contracts that have a component transaction in which the Russian Federation is a Reference Entity will be amended, effective as of the Additional Provisions Effective Date, such that the Russia Additional Provisions apply. For clarity, the amendment would also update the transaction terms to reference the updated ISDA Credit Derivatives Physical Settlement Matrix with the Additional Provisions Effective Date that takes into account the Russia Additional Provisions.

Similarly, ICE Clear Credit is proposing to amend Rule 26D-616, which applies to emerging market sovereign single-name CDS contracts. New subsection (d) would provide that a sovereign single-name CDS contract referencing the Russian Federation will be amended, effective as of the Additional Provisions Effective Date, such that the Russia Additional Provisions apply. For clarity, the amendment would also update the transaction terms to reference the updated ISDA Credit Derivatives Physical Settlement Matrix with the Additional Provisions Effective Date that takes into account the Russia Additional Provisions.

(b) Statutory Basis

ICE Clear Credit believes that the proposed amendments are consistent with the requirements of Section 17A of the Act⁴ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.⁵ Section 17A(b)(3)(F) of the Act⁶ requires,

⁴ 15 U.S.C. 78q-1.

⁵ 17 CFR 240.17Ad-22.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. Consistent with this Section, the amendments revise the terms of single-name and index CDS contracts referencing the Russian Federation in order to implement the Russia Additional Provisions and comply with the relevant restrictions in the Russia Sanctions. In ICE Clear Credit's view, the amendments will therefore facilitate its ability to continue prompt and accurate clearing of such contracts, consistent with applicable law and the public interest as set out in the Executive Order and other Russia Sanctions.

Moreover, the amendments are consistent with Rule 17Ad-22(e)(1)⁷, which requires that each covered clearing agency 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. As discussed herein, the amendments are designed to facilitate compliance by ICE Clear Credit and its clearing participants with the Russia Sanctions, by permitting clearing to continue in accordance with the restrictions on Restricted Debt imposed by the Russia Sanctions.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Credit does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance

⁷ 17 CFR 240.17Ad-22(e)(1).

of the purposes of the Act. The changes will apply to all clearing participants and other market participants. The changes are being proposed in order to comply with the Russia Sanctions and are being made in conjunction with an industry-wide effort to amend relevant CDS contract terms. ICE Clear Credit does not believe the amendments will impact competition among clearing members or other market participants, affect the ability of market participants to access clearing generally, or affect the cost of clearing. ICE Clear Credit further believes that any impact on clearing results from the restrictions imposed under the Russia Sanctions and is necessary and appropriate to ensure compliance with those restrictions.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Credit. ICE Clear Credit will notify the Commission of any comments received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2022-005 on the subject line.

Paper Comments:

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-ICC-2022-005. 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-2022-005 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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.⁸ For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁹ and Rule 17Ad-22(e)(1) thereunder.¹⁰

(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.¹¹ Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed rule change is consistent with the promotion of the prompt and accurate clearance and settlement of transactions at ICC.

The Commission believes that the proposed rule change should help to assure compliance with the Russia Sanctions. The Commission believes that the proposed rule change should do so by incorporating the Russia Additional Provisions into cleared CDS contracts that reference the Russian Federation. As discussed above, the Russia Additional Provisions are designed to implement the Russia Sanctions by, among other

⁸ 15 U.S.C. 78s(b)(2)(C).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17Ad-22(e)(1).

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

things, excluding Russia government bonds that are Restricted Debt from being “Obligations” or “Deliverable Obligations” under the terms of a CDS contract.

The Commission believes that failure to comply with the Russia Sanctions could potentially result in legal liability and other consequences to ICC, like financial penalties. The Commission believes that such liability and penalties could impede ICC’s operations and therefore its ability to clear and settle transactions. Moreover, the Commission believes that failure to comply with the Russia sanctions could specifically impede ICC’s ability to process credit events and other transactions affecting CDS contracts that reference the Russian Federation. The Commission therefore believes that the proposed rule change, by helping assure compliance with the Russia Sanctions, is consistent with the promotion of the prompt and accurate clearance and settlement of transactions at ICC.

The Commission further believes that the proposed rule change should help to ensure consistency between cleared and uncleared CDS contracts. The Commission notes ICC’s representation that market participants generally are expected to adhere to a protocol implementing the Russia Additional Provisions for existing contracts in the uncleared CDS market. The Commission believes that incorporating into cleared CDS contracts the Russia Additional Provisions should help to ensure that the CDS cleared at ICC are consistent with CDS in the uncleared market. The Commission further believes that doing so should help to ensure that ICC is able to accept such uncleared CDS if counterparties later submit them for clearing. In this way, the Commission believes the proposed rule change should promote the prompt and accurate clearance and settlement of transactions at ICC.

Therefore, the Commission finds that the proposed rule change is with Section 17A(b)(3)(F) of the Act.¹²

(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.¹³ As discussed above, the Commission believes that the proposed rule change should help to assure compliance with the Russia Sanctions by incorporating the Russia Additional Provisions into cleared CDS contracts that reference the Russian Federation. The Commission further believes that failure to comply with the Russia Additional Provisions could potentially result in legal liability and other consequences to ICC and could impede the enforceability of cleared CDS that reference the Russian Federation. For example, if there was a credit event that triggered credit protection, then the Russian Sanctions could disrupt settlement of such CDS by prohibiting secondary market transactions in Restricted Debt. Such disrupted settlement could result in CDS buyers not receiving any credit protection payments, effectively making the CDS unenforceable. The Commission therefore believes that by assuring compliance with the Russian Sanctions, the proposed rule change should help assure that ICC's legal basis for clearing CDS contracts referencing the Russian Federation is well-founded and enforceable.

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 17 CFR 240.17Ad-22(e)(1).

Therefore, the Commission finds that the proposed rule change is with Rule 17Ad-22(e)(1).¹⁴

(C) Accelerated Approval of the Proposed Rule Change

In its filing, ICC requests that the Commission grant accelerated approval of the proposed rule change pursuant to Section 19(b)(2)(C)(iii) of the Act.¹⁵ Under Section 19(b)(2)(C)(iii) of the Act,¹⁶ the Commission may grant accelerated approval of a proposed rule change if the Commission finds good cause for doing so. ICC believes that accelerated approval is warranted because incorporating the Russia Additional Provisions is necessary for the maintenance of fair and orderly markets in CDS contracts referencing the Russian Federation in light of the restrictions on Restricted Debt imposed under the Russia Sanctions. Moreover, ICC believes approving the proposed rule change on an accelerated basis is needed for ICC to stay consistent with the uncleared market, which plans to implement the new provisions on or around April 25, 2022. Finally, ICC represents that the proposed rule change will not affect the safeguarding of funds or securities in the custody or control of ICC or for which it is responsible.

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,¹⁷ for approving the proposed rule change on an accelerated basis prior to the 30th day after the date of publication of notice in the Federal Register because the proposed rule change is required to implement the Russia Additional Provisions on or around April

¹⁴ 17 CFR 240.17Ad-22(e)(1).

¹⁵ 15 U.S.C. 78s(b)(2)(C)(iii).

¹⁶ 15 U.S.C. 78s(b)(2)(C)(iii).

¹⁷ 15 U.S.C. 78s(b)(2)(C)(iii).

25, 2022. As discussed above, the Commission believes that implementing the Russia Additional Provisions should help assure compliance with the Russia Sanctions, and therefore help avoid potential legal liability and disruptions to ICC's operations. The Commission further believes that implementing the Russia Additional Provisions on or around April 25, 2022 should help assure that ICC maintains a well-founded and enforceable legal basis for clearing CDS contracts that reference the Russian Federation. Finally, the Commission believes that implementing the Russia Additional Provisions on or around April 25, 2022 should help assure that ICC stays consistent with the uncleared market.

V. 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 Act¹⁸ and Rule 17Ad-22(e)(1)¹⁹ thereunder.

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act²⁰ that the proposed rule change (SR-ICC-2022-005) be, and hereby is, approved on an accelerated basis.²¹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 17 CFR 240.17Ad-22(e)(1).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 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).

²² 17 CFR 200.30-3(a)(12).