

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88064; File No. SR-ICC-2019-010)

January 28, 2020

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Partial Amendment No. 2 to Proposed Rule Change Relating to Amendments to the ICC Clearing Rules to Address Non-Default Losses

On August 8, 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 amend ICC’s Clearing Rules (the “Rules”) to address treatment of losses not related to a Clearing Participant default. The proposed rule change was published for comment in the Federal Register on August 28, 2019.³ On October 4, 2019, the Commission designated a longer period of time for Commission action on the proposed rule change until November 26, 2019.⁴ On October 7, 2019, ICC filed a partial amendment (“Partial Amendment No. 1”) to modify the proposed rule change.⁵ On November 25, 2019, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Self-Regulatory Organizations; ICE Clear Credit LLC; Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Clearing Rules; Exchange Act Release No. 86729 (Aug. 22, 2019); 84 Fed. Reg. 45191 (Aug. 28, 2019) (SR-ICC-2019-010).

⁴ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating to Amendments to the ICC Clearing Rules To Address Non-Default Losses; Exchange Act Release No. 87225 (Oct. 4, 2019); 84 Fed. Reg. 54712 (Oct. 10, 2019) (SR-ICC-2019-010).

⁵ 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.

Commission published notice of Partial Amendment No. 1, solicited comments from interested persons on the proposed rule change as modified by Partial Amendment No. 1, and instituted proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change as modified by Partial Amendment No. 1.⁷ On January 24, 2020, ICC filed Partial Amendment No. 2 to the proposed rule change.

Pursuant to Section 19(b)(1) of the Act⁸ and Rule 19b-4 thereunder⁹ the Commission is publishing notice of Partial Amendment No. 2 to the proposed rule change as described in Items I and II below, which Items have been prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendments No. 1 and No. 2, from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of Partial Amendment No. 2 to the Proposed Rule Change

ICC is filing this Partial Amendment No. 2 to SR-ICC-2019-010 (the "Filing") to make certain clarifications related to the allocation of Investment Losses.¹⁰ With this Partial Amendment No. 2, ICC is including Exhibit 4, which reflects changes to the text

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to Amendments to the ICC Clearing Rules To Address Non-Default Losses; Exchange Act Release No. 87622 (Nov. 25, 2019); 84 Fed. Reg. 66041 (Dec. 2, 2019) (SR-ICC-2019-010).

⁸ 15 U.S.C. 78s(b)(1).

⁹ 17 CFR 240.19b-4.

¹⁰ Capitalized terms used but not defined herein have the meanings specified in the Rules and the Filing.

of the proposed rule change pursuant to this Partial Amendment No. 2, and Exhibit 5, which reflects all proposed changes to the current rule text, as amended by this Partial Amendment No. 2. This Partial Amendment No. 2 makes the following changes to the Filing: (1) it specifies that the allocation of Investment Losses is limited to Investing Participants in the case of Investment Losses in the client origin account and (2) it clarifies that Investment Losses would be determined separately for the house account and client origin account.

In this Partial Amendment No. 2, ICC proposes new term “Investing Participant” in Rule 102. An Investing Participant would be defined in Rule 402(k) as a Participant that has instructed ICC to invest cash Initial Margin provided by it in respect of its client origin account. The incorporation of this term clarifies that, in the case of an Investment Loss in the client origin account, the obligation to pay an Investment Loss Contribution is in respect of Investing Participants under the proposed approach.

Additionally, ICC proposes in this Partial Amendment No. 2 that Investment Losses would be determined separately for the house account and client origin account. In the event the Investment Loss Resources were insufficient to cover the Investment Loss (an “Investment Loss Shortfall”), ICC would have the right, under Rule 811(d), to allocate the Investment Loss Shortfall to Participants (including any Defaulting Participants). In the case of an Investment Loss in the house account, each Participant would be obligated to make a contribution (an “Investment Loss Contribution”), based on its pro rata share of the Investment Loss Shortfall, determined based on the proportion of its aggregate Initial Margin (both house and customer) and General Guaranty Fund contributions (its “Participant IM/GF Contribution”) as compared to the aggregate

Participant IM/GF Contributions for all Participants. For example, in the case of an Investment Loss Shortfall of 3,000 units in the house account, each Participants is obligated make an Investment Loss Contribution. Assuming the aggregate Participant IM/GF Contributions for all Participants is 525,000 units and Participant “ABC” has a Participant IM/GF Contribution of 26,250 (5%), Investing Participant “ABC” has an Investment Loss Contribution of 150 units (5% of the Investment Loss Shortfall).

In the case of an Investment Loss in the client origin account, each Investing Participant would be obligated to pay an Investment Loss Contribution equal to its pro rata share of the Investment Loss Shortfall, determined based on the proportion of its Participant IM/GF Contribution to the aggregate Participant IM/GF Contributions of all Investing Participants. For example, in the case of an Investment Loss Shortfall of 3,000 units in the client origin account where only 27 of 29 Participants are Investing Participants, only 27 Investing Participants are obligated make an Investment Loss Contribution. Assuming the aggregate Participant IM/GF Contributions of all Investing Participants is 500,000 units and Investing Participant “XYZ” has a Participant IM/GF Contribution of 20,000 (4%), Investing Participant “XYZ” has an Investment Loss Contribution of 120 units (4% of the Investment Loss Shortfall). Whether a Participant is an Investing Participant would be determined as of the time immediately prior to the Investment Loss. In the case of simultaneous Investment Losses for the house account and client origin account, available Investment Loss Resources would be applied pro rata based on the amount of such Investment Losses.

The proposed approach in the Filing mutualizes Investment Losses across Participants, in these remote loss scenarios where such losses exceed applicable ICC

resources allocated to such losses. This Amendment No. 2 further clarifies that, with respect to the client origin account, the obligation to pay an Investment Loss Contribution is in respect of Investing Participants. Even though such investment elections by Participants may shift the balances between investment assets (subject to Investment Losses) and custodial assets (subject to Custodial Losses), ICC believes that it is appropriate to limit the allocation of Investment Losses in the client origin account to Investing Participants. Moreover, ICC does not anticipate a significant amount of non-Investing Participants. In ICC's view, the amendments provide an appropriate and equitable method to allocate the loss from an extreme non-default loss scenario and will facilitate ICC's ability to allocate such loss so that it can continue clearing operations.

Additionally, ICC proposes the following clarifying revisions to the Purpose and Statutory Basis sections of the Filing in the Form 19b-4 and Exhibit 1A.

- ICC proposes to add the following text at the end of the second paragraph under “Definition of Loss Categories” on page 5 of the Form 19b-4 and on page 25 of Exhibit 1A: Investment Losses would be determined separately for the house account and client origin account.
- ICC proposes to add the following text at the end of the third paragraph under “Treatment of Losses” on page 6 of the Form 19b-4 and on page 27 of Exhibit 1A: In the case of simultaneous Investment Losses for the house account and client origin account, available Investment Loss Resources would be applied pro rata based on the amount of such Investment Losses.
- ICC proposes to amend the fourth paragraph under “Treatment of Losses” on page 7 of the Form 19b-4 and on page 27 of Exhibit 1A accordingly (new text is bolded and

deleted text is bracketed): In the event the Investment Loss Resources were insufficient to cover the Investment Loss (an “Investment Loss Shortfall”), ICC would have the right, under Rule 811(d), to allocate the Investment Loss Shortfall to [all] Participants (including any Defaulting Participants). In th[at]e case **of an Investment Loss in the house account**, each Participant would be obligated to make a contribution (an “Investment Loss Contribution”), based on its pro rata share of the Investment Loss Shortfall, determined based on the proportion of its aggregate Initial Margin (both house and customer) and General Guaranty Fund contributions (its “Participant IM/GF Contribution”) as compared to the aggregate Participant IM/GF Contributions for all Participants. **In the case of an Investment Loss in the client origin account, each Investing Participant (i.e., a Participant that has instructed ICC to invest cash Initial Margin provided by it in respect of its client origin account) would be obligated to pay an Investment Loss Contribution equal to its pro rata share of the Investment Loss Shortfall, determined based on the proportion of its Participant IM/GF Contribution to the aggregate Participant IM/GF Contributions of all Investing Participants.** Under Rule 811(e), the maximum contribution of a Participant for an Investment Loss Contribution in respect of any event giving rise to an Investment Loss may not exceed its Participant IM/GF Contribution. Investment Loss Contributions could only be applied to Investment Loss Shortfalls (and not Custodial Loss Shortfalls).

- ICC proposes to amend the second paragraph on page 17 of the Form 19b-4 and the third paragraph on page 37 of Exhibit 1A accordingly (new text is bolded and deleted text is bracketed): Under the amendments, losses in excess of the amount of

Investment Loss Resources or Custodial Loss Resources would be shared among Participants **as set forth in Rule 811**[, proportionally based on their respective aggregate initial margin and guaranty fund contributions]. ICC has determined that the allocation of Investment Losses or Custodial Losses, as the case may be, to Participants (**which are limited to Investing Participants in the case of Investment Losses in the client origin account**) should be made proportionately based on the relative Participant IM/GF Contributions. The approach mutualizes both Investment Losses and Custodial Losses across [all] Participants, in these remote loss scenarios where such losses exceed applicable ICC resources allocated to such losses. **The approach also ensures that, with respect to the client origin account, the obligation to pay an Investment Loss Contribution is in respect of Investing Participants.** Participants may be required to make Loss Contributions that are independent of the particular mix of cash and securities provided by the Participant as margin or guaranty fund assets[, or any investment elections made by the Participant with respect to its customer origin account]. Nonetheless, ICC believes that the approach is appropriate in light of the remote nature of the potential losses, the fact that Participant margin and guaranty fund assets are invested and custodied collectively, and the practical and operational considerations that would be required for an approach that attempted to allocate losses based on a Participant's particular assets [and elections]. [In this regard, in ICC's view, individual elections by a Participant with respect to its customer origin account are unlikely to affect the overall risk of Investment Loss and Custodial Loss (and indeed, investment elections by Participants will generally only shift the balances between investment assets

(subject to Investment Losses) and custodial assets (subject to Custodial Losses)).

Regardless of any elections, t]The balance of investments, and the particular investments made, may change on a daily (or more frequent) basis, as may the balance of assets (and types of assets) held with any individual Custodian, meaning that any attempt to allocate based on specific Participant positions would have to be done on a real-time basis. Furthermore, [all] Participant assets are held and invested on an aggregate basis (**excluding Participants that have instructed ICC not to invest cash Initial Margin provided by it in respect of its client origin account**) [(]such that investments cannot be allocated to particular Participants[)], and all **such** Participants receive a blended rate of return from aggregate clearing house investment activity. [As a result,] ICC does not believe it would be operationally feasible, or beneficial to Participants, to attempt to allocate Investment or Custodial Losses based on [particular investment elections made or] assets maintained by individual Participants with the clearing house on a real time basis. Instead, ICC believes it is more appropriate, in light of these operational and other considerations, to allocate Investment Losses and Custodial Losses, if any, to Participants (**which are limited to Investing Participants in the case of Investment Losses in the client origin account**) based on their respective aggregate amount of Margin and General Guaranty Fund assets at the clearing house.

II. Date of Effectives of Proposed Rule Change and Timing for Commission Action

Because the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change,¹¹ the Commission shall by order approve,

¹¹ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings To Determine Whether To

disapprove, or designate a longer period for Commission action on proceedings to determine whether to approve or disapproved the proposed rule change, as modified by Partial Amendments No. 1 and No. 2, by February 24, 2020.

III. 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 Amendments No. 1 and No. 2, 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-2019-010 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-2019-010. 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

Approve or Disapprove Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to Amendments to the ICC Clearing Rules To Address Non-Default Losses; Exchange Act Release No. 87622 (Nov. 25, 2019); 84 Fed. Reg. 66041 (Dec. 2, 2019) (SR-ICC-2019-010).

(<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-2019-010 and should be submitted on or before [insert date 14 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).