

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90928; File No. SR-ICC-2021-001)

January 14, 2021

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the ICC Clearing Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 7, 2021, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared primarily by ICC. ICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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 revise the ICC Clearing Rules (the “Rules”)<sup>5</sup> to clarify an existing requirement of Participants regarding the provision of margin or collateral (“Non-Participant Collateral”) by clients (“Non-Participant Parties”).

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Capitalized terms used but not defined herein have the meanings specified in the Rules.

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, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV 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

ICC proposes revisions to Rule 406(b) to clarify an existing requirement of Participants regarding the provision of Non-Participant Collateral by Non-Participant Parties and to update the terminology in a manner that is consistent with amended Commodity Futures Trading Commission ("CFTC") Regulation 39.13(g)(8)(ii),<sup>6</sup> applicable to ICC as a derivatives clearing organization, which requires compliance by January 27, 2021. As such, ICC has filed the proposed rule change for immediate effectiveness and proposes that it will be operative on or about January 27, 2021 and subject to any regulatory review, approval, or other process. ICC will issue a circular notification, in advance of the operative date. The proposed revisions are described in detail as follows.

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<sup>6</sup> 17 CFR 39.13(g)(8)(ii).

ICC proposes changes to Rule 406, which sets out certain requirements with respect to client-related positions of futures commission merchant (“FCM”) and broker-dealer Participants. Under current Rule 406(b), a Participant must require each Non-Participant Party to provide Non-Participant Collateral in an amount no less than ICC’s margin requirement with respect to the relevant client-related position(s). The proposed changes clarify that such amount would be commensurate with the risk presented by such Non-Participant Party. The proposed changes also remove general language whereby ICC may require additional margin with respect to Non-Participant Parties and, instead, direct Participants to identify Non-Participant Parties with heightened risk profiles and collect margin from them at a level exceeding 100% of ICC’s margin requirement, by such amount as is commensurate with the risk presented. Such changes are intended to clarify and incorporate terminology that is consistent with amended CFTC Regulation 39.13(g)(8)(ii)<sup>7</sup> to facilitate compliance.

In connection with the proposed amendments, ICC would also revoke Circular 2012/008 (the “Circular”)<sup>8</sup> which requires FCM Participants to collect margin from Non-Participant Parties in respect of such Non-Participant Parties’ non-hedge positions, at a level that is 10% greater than ICC’s related margin requirement with respect to each product and swap portfolio. Amended CFTC Regulation 39.13(g)(8)(ii)<sup>9</sup> intended to

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<sup>7</sup> Id.

<sup>8</sup> The Circular was issued on April 20, 2012 and is available at the following: [https://www.theice.com/publicdocs/clear\\_credit/circulars/Circular\\_2012\\_008\\_FI\\_NAL.pdf](https://www.theice.com/publicdocs/clear_credit/circulars/Circular_2012_008_FI_NAL.pdf).

<sup>9</sup> 17 CFR 39.13(g)(8)(ii).

replace this prior market structure, which is reflected in current Rule 406 and the Circular.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>10</sup> and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.<sup>11</sup> In particular, Section 17A(b)(3)(F) of the Act<sup>12</sup> requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. The proposed rule change would update Rule 406(b) to provide clarification to the existing requirement and to update the terminology in a manner that is consistent with amended CFTC Regulation 39.13(g)(8)(ii).<sup>13</sup> Specifically, the proposed revisions clarify that the amount of Non-Participant Collateral would be commensurate with the risk presented by such Non-Participant Party. The proposed changes also remove general language whereby ICC may require additional margin with respect to Non-Participant Parties and, instead, direct Participants to identify Non-Participant Parties with heightened risk profiles and collect margin from them at a level exceeding ICC's margin requirement. Such changes would accordingly replace the requirement in the

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<sup>10</sup> 15 U.S.C. 78q-1.

<sup>11</sup> 17 CFR 240.17Ad-22.

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>13</sup> 17 CFR 39.13(g)(8)(ii).

Circular, which ICC believes is appropriate to facilitate compliance with amended CFTC Regulation 39.13(g)(8)(ii),<sup>14</sup> and better support ICC's ability to manage the risks posed by Non-Participant Parties as the proposed changes result in Participants collecting Non-Participant Collateral at levels commensurate with the risk presented by each Non-Participant Party. Such changes further provide clarity and transparency on the requirement in Rule 406(b) regarding the provision of Non-Participant Collateral and thus strengthen the Rules with clear and more specific guidance, which supports the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. The proposed rule change is thus consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>15</sup>

The amendments would also satisfy relevant requirements of Rule 17Ad-22.<sup>16</sup> Rule 17Ad-22(e)(4)(ii)<sup>17</sup> requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively

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<sup>14</sup> Id.

<sup>15</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>16</sup> 17 CFR 240.17Ad-22.

<sup>17</sup> 17 CFR 240.17Ad-22(e)(4)(ii).

identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. The proposed changes promote ICC's ability to address and manage the risk posed by Non-Participant Parties, including by clarifying that the amount of Non-Participant Collateral would be commensurate with the risk presented by such Non-Participant Party and by directing Participants to identify Non-Participant Parties with heightened risk profiles and collect margin from them at a level exceeding ICC's margin requirement. In ICC's view, the amended language in Rule 406(b) protects the financial integrity of ICC and Participants, as it results in Participants collecting Non-Participant Collateral in an amount commensurate with the risk presented by Non-Participant Parties and is more appropriate in light of amended Regulation 39.13(g)(8)(ii).<sup>18</sup> Such changes promote ICC's ability to manage the risks posed by Non-Participant Parties, including by managing the potential risks arising from Non-Participant Party transactions relating to a potential default of a Non-Participant Party that disrupts a Participant, thereby promoting ICC's ability to continue to maintain its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad-22(e)(4)(ii).<sup>19</sup>

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<sup>18</sup> 17 CFR 39.13(g)(8)(ii).

<sup>19</sup> 17 CFR 240.17Ad-22(e)(4)(ii).

Rule 17Ad-22(e)(6)(i) and (ii)<sup>20</sup> require 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, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market and marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances. As described above, the proposed revisions are intended to clarify the existing requirement in Rule 406(b) and to incorporate terminology that is consistent with amended CFTC Regulation 39.13(g)(8)(ii)<sup>21</sup> to facilitate compliance. Such revisions do not change ICC's margin methodology, which continues to consider, and produce margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market, and do not impact or alter ICC's ability to collect margin or make intraday margin calls. Therefore, ICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(6)(i) and (ii).<sup>22</sup>

Rule 17Ad-22(e)(19)<sup>23</sup> requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising

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<sup>20</sup> 17 CFR 240.17Ad-22(e)(6)(i) and (ii).

<sup>21</sup> 17 CFR 39.13(g)(8)(ii).

<sup>22</sup> 17 CFR 240.17Ad-22(e)(6)(i) and (ii).

<sup>23</sup> 17 CFR 240.17Ad-22(e)(19).

from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities. The proposed amendments support ICC's ability to manage the risks posed by Non-Participant Parties, including by elaborating on the requirement in Rule 406(b) to state that the amount of Non-Participant Collateral would be commensurate with the risk presented by such Non-Participant Party. The proposed changes also include language directing Participants to identify Non-Participant Parties with heightened risk profiles and collect margin from them at a level exceeding ICC's margin requirement to replace general language whereby ICC may require additional margin with respect to Non-Participant Parties. Such changes would replace the requirement in the Circular, which would result in Participants collecting Non-Participant Collateral at levels commensurate with the risk presented by each Non-Participant Party and support ICC's ability to manage the risks posed by Non-Participant Parties given the relationship that Participants have with Non-Participant Parties as opposed to ICC. Such changes also foster a more clear and transparent Rule that will enhance ICC's ability to identify, monitor, and manage the risks posed by Non-Participant Parties, consistent with the requirements of Rule 17Ad-22(e)(19).<sup>24</sup>

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

ICC does not believe the proposed amendments would have any impact, or impose any burden, on competition. The proposed rule change will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change

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<sup>24</sup> Id.



imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

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

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>25</sup> of the Act and Rule 19b-4(f)(6)<sup>26</sup> thereunder.

ICC has requested that the Commission waive both the five-day pre-filing requirement and the 30-day delayed operative date under Rule 19b-4(f)(6)(iii)<sup>27</sup> so that the proposed rule change may become effective and operative upon filing with the Commission. As noted above, ICC designed the proposed amendments to Rule 406(b) for consistency with amended CFTC Regulation 39.13(g)(8)(ii),<sup>28</sup> which requires ICC's compliance by January 27, 2021. ICC does not believe that any delay in implementing

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<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b-4(f)(6).

<sup>27</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>28</sup> 17 CFR 39.13(g)(8)(ii).

rules that reflect these requirements will benefit Participants, their customers, or any other market participants. Any delay is also likely to be inconsistent with market expectations in light of the compliance date of the amended CFTC regulation. As a result, in ICC's view, immediate effectiveness is consistent with the protection of investors and the public interest.

The Commission believes that the delay of the operation of the proposed rule change, through the five-day pre-filing requirement and the 30-day delayed operative date, could impede ICC's timely compliance with amended CFTC Regulation 39.13(g)(8)(ii)<sup>29</sup> and thereby defer the intended benefits and objectives of such regulatory requirements for customer initial margin levels. This, in turn, could disrupt market expectations that ICC will implement the amended CFTC regulation by the January 27, 2021 compliance date, which may adversely affect ICC and its ability to timely replace the requirement in the Circular and manage the risks posed by Non-Participant Parties in compliance with applicable regulatory requirements for the collection of Non-Participant Collateral. The Commission therefore believes that waiving the five-day pre-filing requirement and 30-day operative delay should facilitate ICC's timely compliance with the amended CFTC regulation and avert any potential adverse consequences if such compliance were delayed. Moreover, the Commission believes the proposed rule change would not impose any significant burden on competition because it applies uniformly to both FCM and broker-dealer Participants and their customers as Non-Participant Parties. Thus, the Commission believes the proposed rule change, and waiving the five-day pre-filing requirement and 30-day operative delay, would not (i) significantly affect the

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<sup>29</sup> 17 CFR 39.13(g)(8)(ii).

protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) affect the safeguarding of funds or securities in the custody or control of ICC or for which it is responsible. Therefore, the Commission waives the five-day pre-filing requirement and 30-day operative delay, and designates the proposed rule change as operative upon filing.<sup>30</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. 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](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2021-001 on the subject line.

##### Paper Comments:

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

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<sup>30</sup> For purposes only of waiving the five-day pre-filing requirement and the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-ICC-2021-001. 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-2021-001 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>31</sup> 17 CFR 200.30-3(a)(12).