

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-87622; File No. SR-ICC-2019-010)

November 25, 2019

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 Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to Amendments to the ICC Clearing Rules to Address Non-Default Losses

I. Introduction

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend ICC’s Clearing Rules (the “Rules”)<sup>3</sup> 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.<sup>4</sup> The Commission received comments regarding the proposed rule change.<sup>5</sup> On October 4, 2019, the Commission designated a longer period of time for Commission action on the proposed rule change until November 26, 2019.<sup>6</sup> On October 7, 2019, ICC filed a partial

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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> Capitalized terms used but not defined herein have the meanings specified in the Rules.

<sup>4</sup> 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 Clearing Rules; Exchange Act Release No. 86729 (Aug. 22, 2019); 84 FR 45191 (Aug. 28, 2019) (“Notice”).

<sup>5</sup> Comments are available at <https://www.sec.gov/comments/sr-icc-2019-010/sr-icc-2019-010.htm>.

<sup>6</sup> 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

amendment (“Partial Amendment No. 1”) to modify the proposed rule change.<sup>7</sup> The Commission is publishing this notice and order to solicit comments on Partial Amendment No. 1 from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>8</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, “proposed rule change”).

## II. Description of the Proposed Rule Change

As described more fully in the Notice, the proposed rule change would define three exclusive categories of losses not related to a Clearing Participant default: (i) Investment Losses, (ii) Custodial Losses, and (iii) Non-Default Losses. With respect to the treatment of such losses, the proposed rule change would: (i) define the resources of ICC that ICC would apply to cover each such category of losses; (ii) assign responsibility to Clearing Participants, in certain circumstances, to make contributions with respect to Investment Losses and Custodial Losses; and (iii) address the treatment of recoveries by ICC with respect to such losses. The proposed rule change would also make additional changes related to such losses, including addressing the effect the proposed rule change would have on other ICC rules.

## III. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval under Consideration

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ICC Clearing Rules To Address Non-Default Losses; Exchange Act Release No. 87225 (Oct. 4, 2019); 84 FR 54712 (Oct. 10, 2019).

<sup>7</sup> 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.

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B).

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.<sup>9</sup> Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>10</sup> the Commission is providing notice of the potential grounds for approval or disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with the Act and the rules thereunder, including the following:

- Section 17A(b)(3)(D) of the Act, which requires that that the rules of ICC provide for the equitable allocation of reasonable dues, fees, and other charges among its participants;<sup>11</sup>
- Section 17A(b)(3)(F) of the Act, which 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, to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest;<sup>12</sup>

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<sup>9</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(D).

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

- Rule 17Ad-22(d)(3), which requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a way that minimizes risk of loss or of delay in its access to them;<sup>13</sup> and
- Rule 17Ad-22(d)(8), which requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of ICC’s risk management procedures.<sup>14</sup>

#### IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments regarding the proposed rule change and Partial Amendment No. 1 with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change and Partial Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 17A(b)(3)(D) and (F) of the Act<sup>15</sup> and Rules 17Ad-22(d)(3) and 17Ad-22(d)(8) under the Act,<sup>16</sup> or any other provision of the Act or rules and regulations thereunder.

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<sup>13</sup> 15 U.S.C. 17Ad-22(d)(3).

<sup>14</sup> 15 U.S.C. 17Ad-22(d)(8).

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

<sup>16</sup> 17 CFR 240.17Ad-22(d)(3) and (d)(8).

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>17</sup>

Interested persons are invited to submit written data, views, and arguments regarding Partial Amendment No. 1 and whether the proposed rule change should be approved or disapproved on or before [insert date 15 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal on or before [insert date 21 days from publication in the Federal Register].

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 ICC-2019-010 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E. Washington, D.C. 20549-1090.

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

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<sup>17</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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, N.E., Washington, D.C. 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 [Commission to insert date 15 days from publication in the Federal Register]. If comments are received, any rebuttal comments 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>18</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

