

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88628; File No. SR-ICC-2020-007)

April 14, 2020

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4,<sup>2</sup> notice is hereby given that on April 10, 2020, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. 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”) related to ICC membership requirements.

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.

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

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

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

(a) Purpose

ICC proposes amendments to Chapter 2 of the ICC Rules relating to membership requirements. ICC believes that such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

ICC proposes to amend ICC Rule 201(b), which contains membership requirements of ICC and includes fitness criteria, financial standards, operational standards, and registration qualifications with applicable regulatory authorities. ICC proposes to add new subsection (xiv) to ICC Rule 201(b) to require Clearing Participants ("CPs") to participate in default management simulations, new technology testing and other exercises, as notified by ICC from time to time.

ICC proposes further updates to ICC Rule 206, which contains certain notice requirements for CPs. Currently, under ICC Rule 206(a), a CP must immediately notify ICC, orally and in writing, if it is subject to an event described in ICC Rule 206(a). Such events include material adverse changes in financial condition, restrictions or limitations on certain business conducted by the CP, and becoming insolvent, among others. Amended ICC Rule 206(a) removes the oral notification requirement and only requires written notification to ICC. ICC proposes to amend ICC Rule 206(c) which requires CPs that are broker-dealers to notify ICC of any matter required to be notified to FINRA under FINRA Rule 3070, as well as any matter required to be notified to the Commission

if a broker-dealer and to the Commodity Futures Trading Commission (“CFTC”) if a futures commission merchant under applicable Commission and CFTC regulations. ICC proposes replacing “FINRA Rule 3070” with “FINRA Rule 4530(a)(1)(A),(C),(E) and 4530(b) (or any similar rules),” as FINRA Rule 3070 is no longer applicable and has been superseded by FINRA Rule 4530.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act<sup>3</sup> requires, 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, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, in general, to protect investors and the public interest, and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F)<sup>4</sup>, because ICC believes that the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC’s custody or control, or for which ICC is responsible, and to protect investors and the public interest. The proposed changes amend the membership requirements in

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

<sup>4</sup> Id.

Chapter 2 of the ICC Rules. ICC has no concerns with the current level of CP participation in default management testing or other exercises. The proposed changes formalize the requirement in the ICC Rules that CPs partake in default management simulations, new technology testing and other exercises, as notified by ICC from time to time, in amended ICC Rule 201(b). The proposed changes continue to ensure effective and coordinated default testing with participation from relevant stakeholders, which augments ICC's ability to withstand defaults and continue providing clearing services, thereby promoting 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 revisions to ICC Rule 206 ensure that the ICC Rules remain effective, clear and up-to-date by removing the oral notification requirement, which ICC considers no longer necessary, and replacing "FINRA Rule 3070" with "FINRA Rule 4530(a)(1)(A),(C),(E) and 4530(b) (or any similar rules)," as FINRA Rule 3070 is no longer applicable, to clarify the ICC membership requirements and help members understand and remain compliant. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for

which ICC is responsible, and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.<sup>5</sup>

Section 17A(b)(3)(F) of the Act<sup>6</sup> further requires that the rules of ICC are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency. ICC believes that requiring CPs to participate in default management simulations, new technology testing and other exercises, as notified by ICC from time to time, in proposed ICC Rule 201(b)(xiv) ensures effective and coordinated testing with participation from relevant stakeholders. For example, in ICC's view, participation in periodic testing is necessary and reasonable since successful default management will involve coordination with CPs. Moreover, the changes to the notice requirements in ICC Rule 206 consist of clarification and clean-up changes that do not significantly impact the rights or obligations of CPs under the ICC Rules. As such, the proposed changes are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad-22.<sup>7</sup> Rule 17Ad-22(b)(3)<sup>8</sup> requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which

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<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> 17 CFR 240.17Ad-22.

<sup>8</sup> 17 CFR 240.17Ad-22(b)(3).

it has the largest exposures in extreme but plausible market conditions. ICC believes that the proposed revisions to ICC Rule 201(b) continue to ensure practical and effective default management procedures, as verified by effective and coordinated testing with CP participation, which enhances ICC's ability to manage financial stress from CP defaults, thereby ensuring that ICC continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad-22(b)(3).<sup>9</sup>

Rule 17Ad-22(d)(2)<sup>10</sup> requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency; have procedures in place to monitor that participation requirements are met on an ongoing basis; and have participation requirements that are objective and publicly disclosed, and permit fair and open access. As discussed above, the proposed amendments to ICC Rule 201(b) promote effective and coordinated testing with participation from relevant stakeholders to ensure operational readiness by ICC and its CPs. The proposed changes to Rule 206 provide clarity and transparency in the ICC Rules regarding ICC membership requirements. Replacing the no longer applicable "FINRA Rule 3070" with "FINRA Rule 4530(a)(1)(A),(C),(E) and 4530(b) (or any similar rules)" helps members understand and remain compliant with the

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<sup>9</sup> Id.

<sup>10</sup> 17 CFR 240.17Ad-22(d)(2).

notice requirements in Rule 206. Removing the oral notification requirement that ICC considers no longer necessary in ICC Rule 206(a) further ensures that the ICC Rules remain practical and effective. Moreover, ICC publicly discloses its membership requirements in the ICC Rules on its website. Thus, ICC believes that the proposed changes promote effective and coordinated testing with participation from relevant stakeholders while facilitating fair and open access and provide greater transparency and clarity regarding the ICC membership requirements that are objective and publicly disclosed, consistent with the requirements of Rule 17Ad-22(d)(2).<sup>11</sup>

Rule 17Ad-22(d)(8)<sup>12</sup> requires ICC to 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<sup>13</sup> applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of ICC's risk management procedures. The ICC Rules clearly assign and document responsibility and accountability for reviewing membership applications and compliance with membership requirements and require consultation with or approval from the Risk Management Subcommittee, the Risk Committee, and the Board. As described above, the proposed amendments ensure that the ICC Rules remain effective, clear and up-to-date, including by requiring CP participation in default management simulations, new technology testing and other exercises to

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<sup>11</sup> Id.

<sup>12</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>13</sup> 15 U.S.C. 78q-1.

promote operational readiness and practical and effective policies and procedures, removing the oral notification requirement that is no longer necessary, and removing and replacing “FINRA Rule 3070” that is no longer applicable in Chapter 2. The governance arrangements in the ICC Rules thus continue to be clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of relevant stakeholders is clearly documented, support the objectives of owners and participants, and promote the effectiveness of ICC’s risk management procedures, consistent with the requirements of Rule 17Ad-22(d)(8).<sup>14</sup>

In addition, the amendments are intended to facilitate compliance with the requirements for covered clearing agencies, namely Rule 17Ad-22(e)(13)<sup>15</sup> which requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring the covered clearing agency’s participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto. As such, ICC proposes amended Rule 201(b) that requires ICC’s CPs to participate in the testing and

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<sup>14</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>15</sup> 17 CFR 240.17Ad-22(e)(13).



review of its default procedures, as notified by ICC from time to time, to be consistent with the requirements of Rule 17Ad-22(e)(13).<sup>16</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 changes to the ICC Rules will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change 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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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<sup>16</sup> Id.

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-2020-007 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.

All submissions should refer to File Number SR-ICC-2020-007. 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, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2020-007 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>17</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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