

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95279; File No. SR-ICC-2022-010)

July 14, 2022

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Clearing Rules and the End-of-Day Price Discovery Policies and Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 7, 2022, ICE Clear Credit LLC (“ICE Clear Credit” or “ICC”) filed with the Securities and Exchange Commission (the “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 implement certain amendments to ICC’s Clearing Rules (the “Rules”) and End-of-Day Price Discovery Policies and Procedures (the “EOD Policy”) to establish an additional class of clearing participant. The text of the proposed amendments is attached in Exhibit 5 [sic].

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 C.F.R. 240.19b-4.

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

The purpose of the proposed changes is to modify certain provisions of the Rules and the EOD Policy to permit the establishment of an additional class of clearing participant at ICC, the "Associate Clearing Participant", or "ACP". ICC proposes to move forward with implementation of these changes following Commission approval of the proposed rule change.³ In general, an ACP would have the same rights, obligations and responsibilities as other Participants (referred to as "Full Participants"), with defined exceptions. Specifically, an ACP will be permitted to provide pricing submissions with respect to certain North American CDS products as of the end of the London trading day, rather than the end of the New York trading day. This change is intended to facilitate United Kingdom and European institutions becoming clearing participants in ICC where they may not have the global operational or other resources to support price submissions for North American instruments outside of London trading hours. The amendments would make a number of corresponding changes and impose certain limitations on ACPs

³ ICC does not intend to implement this additional class of clearing participant until ICC is permitted to implement the changes described herein and ICC completes any other required governance or internal processes. ICC will issue a circular notification in advance of the operative date.

intended to assist ICC in mitigating any additional risks resulting from these changes in the price submission process for ACPs. For example, the amendments allow ICC to impose a different clearing cut-off time for ACPs (intended to coincide with the end of the London trading day, such that ACPs may not submit new trades for clearing at a time when they are not able to provide price submissions). ACPs also will not be permitted to submit trades on behalf of customers.⁴ In addition, ICC may, but is not obligated to, impose additional or alternative margin requirements for ACPs if it determines that is appropriate from a risk management perspective. It is expected that ACPs will be required to satisfy the same initial and ongoing membership standards and requirements as Full Participants, although ICC will have the authority to modify membership standards for ACPs if it determines it is appropriate to do so. ACPs will be required to make contributions to the General Guaranty Fund and participate in default management (including through mandatory auctions, if applicable) to the same extent as Full Participants.

A number of provisions of the Rules would be amended to implement the ACP category. In Rule 102, definitions for “Associate Clearing Participant”, “Full Participant”, “NA Instruments” and “NA Instrument EU EOD Submission” (defined in Rule 212 as discussed below) would be added.

ICC would adopt a new Rule 212 authorizing it to establish ACPs as a new category of clearing participant, on the terms set out in the Rule. Subsection (a) would provide that ACPs constitute Participants for all purposes under the Rules, except as

⁴ It is accordingly not expected that ACPs would be registered futures commission merchants.

provided in Rule 212 or the ICE Clear Credit Procedures. Subsection (b) would authorize ICC to establish separate price submission requirements for ACPs, including for Contracts with North American reference entities or indices (or such other Contracts as ICC determines), referred to as “NA Instruments”. For such contracts, ICC would establish a new price submission window at the end of the London trading day during which ACPs would be required to make price submissions for NA Instruments (referred to as “NA Instrument EU EOD Submissions”). ACPs would not be required to make the standard end-of-day price submissions at the end of the New York trading day for NA Instruments, however. ICC would also be permitted to establish firm trade requirements between ACPs with respect to NA Instrument EU EOD Submissions (as discussed further below in connection with the EOD Policy). Full Participants would be permitted, but not required to make NA Instrument EU EOD Submissions (and would not be subject to firm trade requirements with respect to such submissions). For all other Contracts, ACPs would be subject to the same end-of-day price submission requirements as Full Participants.

Subsection (c) would permit ICC to establish different daily deadlines for submission of trades by ACPs as compared to Full Participants. ICC expects to impose such a deadline for ACPs at the close of the London trading day. Subsection (d) would permit ICC to establish different or supplemental margin requirements (or margin parameters) applicable to ACPs. ICC does not at this time plan to implement such margin requirements but believes it is appropriate to have the authority to do so to manage any incremental risk that may arise from the activity of ACPs.

Pursuant to subsection (e), ACPs would be permitted to submit trades for clearing only for their own accounts or the account of affiliates, as House Positions. ICC believes that clearing participants that engage in clearing on behalf of customers should be Full Participants, with the operational and other resources to submit pricing at all relevant times for the full spectrum of products that they or their customers may submit.

ICC would have the authority to establish additional or alternative membership standards, specifically as to business integrity, financial capacity, creditworthiness, operational capability, experience and competence for ACPs, pursuant to subsection (f). Except to the extent of any such alternative or additional standards, the existing membership standards in Rule 201 would apply to ACPs. Under subsection (g), ICC may adopt a separate form of participant agreement for ACPs reflecting their status as such.

Under Rule 212(h), an affiliate of an existing Participant would not be eligible to be an ACP. Rule 212(i) would add, for clarification, that Rule 212 does not affect the rights or obligations of Full Participants.

ICC would also make related changes to the EOD Policy addressing the price submission requirements applicable to ACPs, and differentiating the requirements for ACPs and Full Participants relating to NA Instruments. Specifically, the amendments would add an additional submission window for the ICC end-of-day price submission process, covering NA Instruments but determined at the end of the London trading day (referred to as the “NA Instrument EU Submission Window”). The amendments would provide that the NA Instrument EU Submission Window is intended primarily to support ACPs, and further that all elements of the price discovery process for that window would follow those for the EU submission window. Certain other clarifying and conforming

drafting changes would be made to distinguish the NA Instrument EU Submission Window from other submission windows.

The provisions of the EOD Policy relating to the use of intraday quotes received by ICC would be amended to provide that if a Participant fails to make a required end-of-day submission during the applicable window, ICC may use the last intraday quote received prior to the close of that window (if one has been received on that day) to serve as that Participant's end-of-day submission.

The submission requirement section would be revised to provide that (i) ACPs must provide submissions for NA Instruments during the NA Instrument EU Submission Window, but would not be required to provide submissions for the end-of-NY trading day NA submission window, and (ii) Full Participants may, but will not be obligated to, provide submissions for the NA Instrument EU Submission Window. The amendments would also state, consistent with the Rule amendments, that ACPs have the same obligations with respect to daily end-of-day submissions as Full Participants, except as set out in the amended EOD Policy. Conforming changes would be made throughout this section.

The provisions of the EOD Policy relating to firm trades would be revised to provide that for the NA Instrument EU Submission Window, ICC will only designate firm trades between ACPs (and, for the avoidance of doubt, voluntary submissions by Full Participants in that window will not be subject to firm trades). Further, firm trades between ACPs originating from the NA Instrument EU Submission Window would not be eligible for reversing transactions.

The revised EOD Policy would also provide that prices established in the NA Instrument EU Submission Window will not be published externally by ICC. Such prices would be used only for ICC risk management purposes.

The timetables for the end-of-day submission process in the appendix to the EOD Policy would also be updated to include the NA Instrument EU Submission Window (with timing and deadlines consistent with the EU submission window, as noted above).

(b) Statutory Basis

ICE Clear Credit believes that the proposed amendments are consistent with the requirements of Section 17A of the Act⁵ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.⁶ Section 17A(b)(3)(F) of the Act⁷ 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, 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.

The amendments provide for the establishment of a new category of clearing participant, ACPs. The ACP category is intended to facilitate entities becoming clearing participants, particularly European institutions, that may have limited global operational or other resources outside of London business hours that may otherwise make it difficult

⁵ 15 U.S.C. 78q-1.

⁶ 17 C.F.R. 240.17Ad-22.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

to satisfy the price submission requirements of being a clearing participant for NA Instruments. ACPs would be required to submit prices in NA Instruments at the end of the London trading day (instead of the New York trading day), to facilitate the risk management by ICC of ACP positions. Further, the proposed rules will impose certain limitations on ACPs, as compared to Full Participants, including allowing ICC to limit the ability of ACPs to submit new trades for clearing after the close of the London trading day and to limit the ability of ACPs to submit trades for customers. ICC also retains the ability to impose additional or alternative margin requirements on ACPs to the extent appropriate from a risk management perspective. In ICC's view, the ACP category thus provides an ability for ICC to potentially expand the pool of clearing participants, while maintaining the clearing house's ability to conduct risk management. In this regard, ICC notes that ACPs will, with the limited exceptions identified herein, be required to perform all obligations of Participants, including contributions to the General Guaranty Fund and default management. ICC will further maintain ACP margin and guaranty fund contributions in the same manner it holds margin and guaranty fund contributions of Full Participants. As a result, in ICC's view, the amendments are consistent with the prompt and accurate clearance and settlement of securities transactions and 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 the investors and the public interest, within the meaning of Section 17A(b)(3)(F).⁸

⁸ 15 U.S.C. 78q-1(b)(3)(F).

Moreover, the amendments are consistent with relevant provisions of Rule 17Ad-22.⁹ In particular, Rule 17Ad-22(e)(18) requires that each covered clearing agency “establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . establish objective, risk-based and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant indirect participants . . . require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.”¹⁰ The amendments would create a new category of participant, ACPs, and set out rights, obligations and responsibilities of such participants. As noted above, ACPs would largely have the same rights and obligations as Full Participants, with certain exceptions designed to facilitate participation by persons that may not have the full global operational capability to provide prices for NA Instruments at the close of the New York trading day. The amendments appropriately limit clearing by ACPs in light of the limited submission requirements by allowing for an earlier deadline for clearing submission, limiting customer clearing and providing ICC the flexibility to impose additional or alternative margin requirements if appropriate. In ICC’s view, the proposed rules thus provide a way of expanding the potential pool of clearing participants while maintaining robust risk management. As noted above, ACPs will be subject to the same guaranty fund, and the same or additional margin requirements as Full Participants. All other

⁹ 17 C.F.R. 240.17Ad-22.

¹⁰ 17 C.F.R. 240.17Ad-22(e)(18).

requirements of Participant status, and ICC’s existing Participant monitoring program, will apply to ACPs (although ICC can impose additional or modified requirements appropriate to ACPs). As a result, in ICC’s view, the amendments are consistent with the requirements of Rule 17Ad-22(e)(18).¹¹

Rule 17Ad-22(e)(6)(iv)¹² requires that a covered clearing agency “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: . . . (iv) uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.” The amendments, including the changes to the EOD Policy, are designed, consistent with the goal of admitting ACPs that may not have global operational capability to submit prices outside of London trading hours, to continue to provide ICC with robust pricing to support its margin model. ACPs would be required, for NA Instruments, to submit prices in a new submission window at the end of the London trading day. ICC would use such prices for risk management purposes, including for purposes of the margin model. ICC would use the same procedures for other price submissions, including requiring firm trades among ACPs, to ensure the robustness of submitted prices. In ICC’s view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(6)(iv).¹³

¹¹ 17 C.F.R. 240.17Ad-22(e)(18).

¹² 17 C.F.R. 270.17Ad-22(e)(6).

¹³ 17 C.F.R. 240.17Ad-22(e)(6)(iv).

(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 of the purposes of the Act. The amendments are not intended to affect the rights or obligations of existing Participants. The changes would adopt an additional category of clearing participant, the ACP, which would be available to eligible institutions that meet the clearing house's requirements. ACPs will be subject to the same rights, obligations and responsibilities as Full Participants, but will submit prices for NA Instruments during a submission window at the end of the London trading day rather than the New York trading day. This is intended to facilitate participation by institutions that may not have the global operational capability to submit prices outside of the London trading day, but maintain the clearing house's ability to manage the risk of clearing in such instruments. As a result, ICE Clear Credit does not believe the amendments will impact competition among clearing members or other market participants, adversely affect the ability of market participants to access clearing generally, or adversely affect the cost of clearing. ICE Clear Credit thus does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate 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 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. 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

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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-2022-010 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-2022-010. 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 (<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-2022-010 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.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 C.F.R. 200.30-3(a)(12).