

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97455; File No. SR-ICC-2023-008)

May 8, 2023

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4,² notice is hereby given that on May 02, 2023, ICE Clear Credit LLC (“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

ICC proposes a rule change to update the ICC Clearing Participant (“CP”) Default Management Procedures (the “ICC Default Management Procedures”). These revisions do not require any changes to the ICC Clearing Rules (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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 to update the ICC Clearing Participant Default Management Procedures (the "ICC Default Management Procedures"). The ICC Default Management Procedures set forth ICC's default management process, including the actions taken by ICC to determine that a CP is in default of its obligations to ICC under the Rules, as well as the actions taken by ICC in connection with the close-out of the defaulter's portfolio (the "Close-Out"). The proposed revisions are designed to address Commission regulatory examination findings related to the annual testing of the ICC Recovery Plan and the ICC Wind-Down Plan (collectively, the "Plans").³ The proposed revisions are limited to providing additional details with respect to ICC's testing of the Plans included in the ICC Default Management Procedures. ICC believes 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 updates are described in detail as follows.

Specifically, ICC purposes to revise the ICC Default Management Procedures by adding Section 4.6 Recovery and Wind-Down Tests. Section 4.6 adds detailed procedures

³ The ICC Recovery Plan and ICC Wind-Down Plan are the plans for the recovery and orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or other losses.

with respect to ICC's annual Recovery and Wind-Down testing. ICC conducts Recovery and Wind-Down testing at least every twelve months demonstrating ICC's readiness to execute the Plans as applicable (i) to address uncovered credit losses, liquidity shortfalls and general business risk, operational risk, or any other risk that threatens ICC's viability as a going concern, and (ii) in the event recovery actions fail to preserve ICC's viability as a going concern or ICC makes a business decision to exit all clearing activities, to wind-down ICC in an orderly manner (the "Recovery and Wind-Down Test").

Proposed Section 4.6 also includes details on how the scope of each Recovery and Wind-Down Test is determined. It is the responsibility of the ICC Risk Oversight Officer ("ROO") to plan and coordinate the execution of the Recovery and Wind-Down Test, including the determination of the scope of the Recovery and Wind-Down Test which includes coordination with the ICC Close-Out Team.⁴ Such scope will include which recovery and wind-down scenarios will be tested, the selected stress scenario(s), and the recovery tools to be tested. In the determination of which scenarios and tools are to be tested, ICC will give consideration to scenarios, business processes, and tools which have not been recently tested. In addition, ICC will consider the applicability of new Rules, procedures, or newly implemented ICC capabilities (e.g., new cleared contracts). The scope also will include all three wind-down options set forth in the ICC Wind-Down Plan. Section 4.6 further provides that with respect to the testing of business processes and tools to address CP default scenarios, ICC may choose to include such testing in

⁴ The ICC Close-Out Team is comprised of ICC management, the ROO, and the most senior member of the ICC Treasury Department.

ICC's default management tests, and testing of non-CP default scenarios will be conducted through a separate table-top exercise.

Furthermore, proposed Section 4.6 assigns responsibility for the execution of the Recovery and Wind-Down Test to the ICC Close-Out Team, capturing results, and making them available to the ROO. The ROO collates the results and, identifies any issues or lessons learned, including any revisions that should be made to the ICC Recovery Plan or ICC Wind-Down Plan. The ROO collates the information from the Recovery and Wind-Down Test into a presentation which is reviewed with the Close-Out Team, the ICC Risk Committee and the ICC Board of Managers. The ROO maintains a list of work items for the future development and/or enhancement of the business processes and capabilities necessary to execute the ICC Recovery Plan and ICC LLC Wind-Down Plan.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act⁵ 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 additional procedural details to ICC's Default Management Procedures included in the proposed rule change

⁵ 15 U.S.C. 78q-1(b)(3)(F).

are 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)⁶, because ICC believes that the proposed additional procedural details to ICC's Default Management Procedures enhances policies, practices and procedures with respect to the testing of ICC Recovery Plan and the ICC Wind-Down Plan. Such sound policies, practices and procedures are important to enhance 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. 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.⁷

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad-22.⁸ Rule 17Ad-22(b)(3)⁹ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient

⁶ Id.

⁷ Id.

⁸ 17 CFR 240.17Ad-22.

⁹ 17 CFR 240.17Ad-22(b)(3).

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. ICC believes that such changes enhance ICC's ability to manage a default by providing additional detail, transparency and clarity with respect to ICC's default management rules and procedures, 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).¹⁰

Rule 17Ad-22(e)(2)(i) and (v)¹¹ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The Recovery and Wind-down Testing updates to the ICC Default Management Procedures enhance the clarity and transparency of such procedures by providing additional information relating to the assignment of responsibilities in the determination of the scope of the annual Recovery and Wind-down Test, and the assignment of responsibilities in the execution of the annual Recovery and Wind-Down Test, consistent with the requirements of Rule 17Ad-22(e)(2)(i) and (v).¹²

Rule 17Ad-22(e)(3)(ii)¹³ requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk

¹⁰ Id.

¹¹ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

¹² Id.

¹³ 17 CFR 240.17Ad-22(e)(3)(ii).

management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICC, which includes plans for the recovery and orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses. The Default Management Procedures continue to establish ICC's actions to maintain its viability as a going concern to address any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness that threatens ICC's viability. The proposed changes to the Default Management Procedures provide additional detailed procedures with respect to the annual Recovery and Wind-Down testing, improving both the comprehension and transparency of ICC's Recovery and Wind-Down testing. In ICC's view, such proposed changes will improve ICC's Default Management Procedures and ensure they remain comprehensive and useful in providing for ICC's written policies and procedures related to ICC's recovery and orderly wind-down, consistent with the requirements of Rule 17Ad-22(e)(3)(ii).¹⁴

Rule 17Ad-22(e)(13)¹⁵ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure it 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 its 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. The proposed changes to the Default Management

¹⁴ Id.

¹⁵ 17 CFR 240.17Ad-22(e)(13).

Procedures enhance the clarity and transparency of such procedures by providing additional information relating to the assignment of responsibilities in the determination of the scope of the annual Recovery and Wind-down Test, and the assignment of responsibilities in the execution of the annual Recovery and Wind-Down Test. Such proposed changes, therefore, improve the design of ICC's annual Recovery and Wind-Down Testing, consistent with the requirements of Rule 17ad-22(e)(13).¹⁶

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

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed rule change to update the ICC Default Management Procedures 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:

¹⁶ Id.

- (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 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. Please include File Number SR-ICC-2023-008 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-2023-008. 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>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-ICC-2023-008 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.¹⁷

Sherry R. Haywood
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).