

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97734; File No. SR-ICC-2023-007)

June 15, 2023

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Recovery Plan and the ICC Wind-Down Plan

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4,² notice is hereby given that on June 05, 2023, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“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 revising the ICC Recovery Plan and the ICC Wind-Down Plan, which serve as 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, consistent with Rule 17ad-22(e)(3)(ii).³ ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed rule change is described in detail as follows.

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 and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.17Ad-22(e)(3)(ii).

received on the proposed rule change. 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 revising the ICC Recovery Plan and the ICC Wind-Down Plan, which serve as 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, consistent with Rule 17ad-22(e)(3)(ii).⁴ ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed rule change is described in detail as follows.

ICC Recovery Plan

Consistent with the regulations applicable to ICC, the ICC Recovery Plan is designed 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. ICC proposes general updates and edits to promote clarity and to ensure that the information provided is current. The proposed amendments reflect and relate to changes that impacted ICC in the past year, including changes to the coverage amount under the ICC clearing participant ("CP") default insurance policy ("CP Default Insurance Policy")⁵, and the addition of ICC specific procedures for financial resource calculations.

⁴ 17 CFR 240.17Ad-22(e)(3)(ii).

⁵ The CP Default Insurance Policy covers specified losses resulting from a CP default.

ICC proposes general updates to ensure that the information in the ICC Recovery Plan is current. In Section I and throughout the document, the proposed changes specify that the information provided is current as of December 31, 2022, unless otherwise stated. Namely, the proposed changes ensure that relevant information regarding ICC for recovery planning, such as information about ICC’s ownership and operation, is current with respect to:

- activities of Intercontinental Exchange, Inc. (“ICE” or collectively, the “ICE Group” of affiliated companies with ICE as the ultimate parent) in Section II.A;
- a new ICC membership category - Associate Clearing Participant in Section IV.B;
- correction to the Management/Governance chart in Section IV.C;⁶
- description of an ICC Independent Director in Section IV.C;
- data regarding ICC revenues, volumes, and expenses in Section IV.D;
- ICC personnel and facilities in Section VI.A;
- description of ICC in-house systems in Section VI.A;⁷
- ICC Counterparty Chart in Section VI.B;⁸

⁶ The BCP and DR Oversight Committee is a sub-committee of the ICC Compliance Committee. The Management/Governance chart incorrectly indicated that the BCP and DR Oversight Committee is a sub-committee of the ICC Audit Committee - and such error has been corrected.

⁷ In connection with a future datacenter migration effort, ICC’s in-house systems were renamed, recategorized and consolidated in an ICE Group enterprise-wide coordination of all ICE business applications. As a result of these comprehensive changes in naming conventions, the December 31, 2021 chart of ICC’s in-house systems in Section VI.A. has been removed and replaced with a new chart of ICC’s current in-house systems that reflect the new names, categories and updated descriptions.

⁸ The Counterparty Chart has been updated due to the termination of three reverse repurchase agreements and the addition of one new reverse repurchase agreement.

- contacts under the ICC Default Insurance Policy in Section VIII.B;
- coverage amount under the Professional Liability/Cyber (E&O) Insurance Policy in Section VIII.B;
- financial resources for recovery in Section X; and
- ICC and ICE Group financial information in Section VIII and XI.

Additionally, ICC proposes updates regarding the CP Default Insurance Policy maintained at the ICE Group level, which may be used as a recovery tool in a CP default scenario. In Section VIII.B, the ICC CP Default Insurance Policy coverage amount has increased to \$75 million instead of the prior \$50 million, to the extent that the defaulting CP's obligations to ICC exceed the sum of: (1) the defaulting CP's available margin and Guaranty Fund contributions; and (2) the ICC "skin in the game" contributions to default resources of \$50 million.

Also, in Section VIII.3.iii., ICC proposes to add a footnote reference to ICC's Risk Appetite Statements and Metrics to describe the thresholds with respect to regulatory capital requirements that would trigger alerts for ICC nearing a capital requirement breach (i.e., the current alert is triggered if ICC maintains 110% or less of its required regulatory capital). Such reference to ICC's Risk Appetite Statements and Metrics is intended to provide further details on how decreases in ICC's regulatory capital will trigger escalation within ICC which may lead to potential remedial actions, including whether ICC should initiate its plan to raise additional equity.

In Section X, ICC proposes including additional details regarding the calculation of ICC's financial resources available for recovery to reflect new ICC specific Financial Resource Calculation Procedures. Specifically, ICC completes a voluntary annual

calculation of regulatory requirements under European Market Infrastructure Regulation (“EMIR”) guidelines.⁹ ICC’s calculation approximates the EMIR requirements and is calculated by ICE Treasury on an annual basis upon the finalization of ICC’s statutory audit and financial statements and a discussion of future expectations with the ICC Treasury Director. The EMIR Estimate includes four elements relating to: winding down/restructuring; operational and legal risks; credit and counterparty risk/market risk; and business risks. Such procedures include additional details regarding the calculation of regulatory capital requirements under EMIR guidelines, which ICC complies with on a voluntary basis.

ICC proposes additional minor edits for clarity and consistency in the ICC Recovery Plan. In the counterparty contractual agreements chart in Section VI, ICC removed the reference to a service no longer received from a specific external service provider (i.e., receipt of market data to value FX positions and collateral). In Section XIII, Appendix G, the applicable contact information on the CP Default Insurance Policy has been updated. Specifically, the carrier and the insurance contract policy number has been updated. In Section XIV, the proposed changes update the index of exhibits with the current versions of policies and procedures, consistent with updated footnote references. Finally, ICC proposes minor typographical fixes in the ICC Recovery Plan as well as conforming changes in in the ICC Wind-Down Plan, including updates to entity names, and grammatical and formatting changes.

⁹ See EU clearing house regulatory capital requirements as defined by EMIR under EU Regulation 153/2013.

ICC Wind-Down Plan

The ICC Wind-Down Plan is designed to establish how ICC could be wound-down in an orderly manner. ICC proposes corresponding changes to the ICC Wind-Down Plan. ICC proposes general updates and edits to promote clarity and to ensure that the information provided is current. The proposed amendments reflect and relate to changes that have impacted ICC in the past year, including the addition of ICC specific procedures for financial resource calculations.

ICC proposes general updates to ensure that the information in the ICC Wind-Down Plan is current. In Section I and throughout the document, the proposed changes specify that the information provided is current as of December 31, 2022, unless otherwise stated. The proposed revisions ensure that relevant information regarding ICC for wind-down planning, such as information about ICC's ownership and operation, is current with respect to:

- activities of ICE in Section II.A;
- correction to the Management/Governance chart in Section IV.B;¹⁰
- description of an ICC Independent Director in Section IV.B;
- ICC revenues in Section VII.A;
- ICC personnel and facilities in Section VII.C;
- description of ICC in-house systems in Section VII.C;¹¹

¹⁰ The BCP and DR Oversight Committee is a sub-committee of the ICC Compliance Committee. The Management/Governance chart incorrectly indicated that the BCP and DR Oversight Committee is a sub-committee of the ICC Audit Committee - and such error has been corrected.

¹¹ In connection with a future datacenter migration effort, ICC's in-house systems were renamed, reorganized and consolidated in an ICE Group enterprise-wide coordination of all ICE business applications. As a result of these comprehensive changes in naming conventions, the December 31, 2021 chart of ICC's in-house systems in Section VII.C. has been removed and replaced with a

- ICC Counterparty Chart VII.D;¹² and
- financial resources to support wind-down in Section IX.

ICC also proposes including additional details regarding the calculation of ICC's financial resources available for wind-down to reflect the new ICC specific Financial Resource Calculation Procedures. Such procedures include additional details regarding the calculation of regulatory capital requirements under EMIR guidelines, which ICC complies with on a voluntary basis.

ICC proposes additional updates and edits to promote clarity and consistency in the ICC Wind-Down Plan. In the counterparty contractual agreements chart in Section VIII, ICC removed the reference to a service no longer received from a specific external service provider (i.e., receipt of market data to value FX positions and collateral). In Section XII, the proposed changes update the index of exhibits with the current versions of policies and procedures, consistent with updated footnote references.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act¹³ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.¹⁴ In particular, Section 17A(b)(3)(F) of the Act¹⁵ requires that the rule change be consistent with the prompt and accurate clearance

new chart of ICC's current in-house systems that reflect the new names, categories and updated descriptions.

¹² The Counterparty Chart has been updated due to the termination of three reverse repurchase agreements and the addition of one new reverse repurchase agreement.

¹³ 15 U.S.C. 78q-1.

¹⁴ 17 CFR 240.17Ad-22.

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

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.

ICC believes the proposed changes would enhance its ability to effectuate a successful recovery as well as to execute an orderly wind-down by providing updates and additional clarity with respect to ICC's recovery and wind-down processes and procedures. As discussed herein, the proposed revisions ensure that relevant information regarding ICC for recovery and wind-down planning is current, including updated information regarding personnel and facilities, finances and operations, and financial resources for recovery and wind-down. To support and enhance the implementation of the Plans, additional language clarifications or edits are included so that the Plans remain up-to-date, transparent, and focused on clearly articulating the policies and procedures used to support ICC's recovery and wind-down efforts.

Such revisions include additional details regarding required disclosures, references to relevant policies, updated information regarding recovery tools, and amended language that is intended to be more precise. The Plans would thus promote ICC's ability to continue providing clearing services with as little disruption as possible, and should continuation not be feasible, promote ICC's ability to discontinue clearing services in an orderly manner with minimum negative impact to the marketplace and stakeholders. Accordingly, in ICC's view, the proposed rule change is 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.¹⁶

Rule 17Ad-22(e)(3)(ii)¹⁷ requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk 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 ICC Recovery Plan continues 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 ICC Wind-Down Plan continues to establish how ICC could be wound-down in an orderly manner should its recovery efforts fail. As described above, the proposed changes include updates and edits to promote clarity and to ensure that the information in the Plans is current, such as updated information regarding financial resources for recovery and wind-down. In ICC's view, such changes would ensure that the Plans remain useful and effective in a recovery and wind-down scenario. The proposed rule change would thus promote ICC's ability to carry out a successful recovery or orderly wind-down, consistent with the requirements of Rule 17Ad-22(e)(3)(ii).¹⁸

¹⁶ Id.

¹⁷ 17 CFR 240.17Ad-22(e)(3)(ii).

¹⁸ Id.

Rule 17Ad-22(e)(15)¹⁹ requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify monitor, and manage ICC’s general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that ICC can continue operations and services as a going concern if those losses materialize, including by (i) determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken; (ii) holding liquid net assets funded by equity equal to the greater of either (x) six months of ICC’s current operating expenses, or (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of ICC, as contemplated by the plans established under Rule 17ad-22(e)(3)(ii)²⁰; and (iii) maintain a viable plan, approved by the Board and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under Rule 17ad-22(e)(15)(ii).²¹

The Plans continue to analyze ICC’s particular circumstances and risks to ensure that ICC maintains financial resources necessary to implement both Plans and that ICC remains in compliance with all regulatory capital requirements. The Plans include updated information on the financial resources maintained by ICC for recovery and to support wind-down in compliance with relevant regulations and include procedures to

¹⁹ 17 CFR 240.17Ad-22(e)(15).

²⁰ 17 CFR 240.17Ad-22(e)(3)(ii).

²¹ 17 CFR 240.17Ad-22(e)(15)(ii).

follow in case of any shortfall. Such changes continue to ensure that the Plans remain accurate and useful, and that ICC holds sufficient liquid net assets to achieve recovery or orderly wind-down. As such, ICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(15).²²

(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 changes to the Plans will apply uniformly across all market participants. The changes are being proposed to promote clarity and ensure that the information provided is current in the Plans. ICC does not believe the amendments would affect the costs of clearing or the ability of market participants to access clearing. Therefore, ICC does not believe the proposed rule change would impose 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

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

²² 17 CFR 240.17Ad-22(e)(15).

(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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ICC-2023-007 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-2023-007. This file number should be included on the subject line if email 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 (<https://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 am and 3 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-2023-007 and should be submitted on or before [INSERT DATE 21 DATES AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

J. Matthew DeLesDernier,

Deputy Secretary.

²³ 17 CFR 200.30-3(a)(12).