

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97792; File No. SR-ICC-2023-008)

June 26, 2023

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

I. Introduction

On May 2, 2023, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the ICC Clearing Participant Default Management Procedures. The proposed rule change was published for comment in the Federal Register on May 12, 2023.³ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts. ICC clears CDS contracts for its members, which it refers to as Clearing Participants.⁴ Clearing CDS contracts for Clearing Participants presents certain risks to ICC, such as the risk that a Clearing Participant may default on payments or other obligations it owes to ICC. Accordingly, ICC has developed a comprehensive set of tools to manage and mitigate

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures; Exchange Act Release No. 97455 (May 8, 2023), 88 FR 30812 (May 12, 2023) (File No. SR-ICC-2023-008) (“Notice”).

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in the ICC Clearing Participant Default Management Procedures or the ICC Clearing Rules.

such risks. These tools include, among other things, collecting margin from Clearing Participants, maintaining a Guaranty Fund, and establishing procedures to manage a Clearing Participant’s default.

The proposed rule change relates to the third set of risk management tools—procedures that explain what happens when a Clearing Participant is in default and how ICC responds to the default, which ICC refers to as its Clearing Participant Default Management Procedures (the “Procedures”). The proposed rule change would amend the Procedures.

The proposed rule change would add Section 4.6 to the Procedures, which would explain how ICC tests both its Recovery Plan and its Wind-Down Plan (together the “Plans”). ICC would test the Plans at least once every twelve months, and the purpose of these annual tests would be to demonstrate that ICC is ready to execute the Plans when needed. ICC would need to execute the plans, for example, in the following circumstances: (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) to wind-down ICC in an orderly manner.

Section 4.6 would detail (i) the ICC personnel responsible for planning and conducting the tests and (ii) the overall scope of the tests. With respect to responsible personnel, the ICC Risk Oversight Officer (“ROO”) would have overall responsibility for planning and coordinating the execution of each test. In doing so, the ROO would work with other members of the Close-Out Team⁵ to determine the scope of the test. The proposed scope and format of the test would be presented to the ICC Board of Managers for review prior to execution of the test. After Board

⁵ The ICC Close-Out Team is comprised of ICC management, the ROO, and the most senior member of the ICC Treasury Department.

review, the Close-Out Team would then be responsible for executing the tests, capturing the results of the tests, and providing the results to the ROO.

Once provided with the results, the ROO would collate the information, summarize any lessons learned, and identify possible revisions that should be made to the Plans. The ROO would then develop a presentation to summarize the tests. The Close-Out Team, ICC Risk Committee, and Board would review this presentation. Going forward, the ROO would maintain a list of work items for the future development and/or enhancement of the business processes and capabilities necessary to execute the Plans.

With respect to the overall scope of each test, this would include choosing the recovery and wind-down scenarios and the recovery tools to test. In choosing the scenarios and tools, ICC would give consideration to scenarios, business processes, and tools which have not been recently tested. In addition, ICC would consider the applicability of new Rules, procedures, or newly implemented ICC capabilities (such as new cleared contracts). Finally, Section 4.6 would specify that ICC would always include in the test all three wind-down options set forth in the Wind-Down Plan.

Section 4.6 would also state that ICC could conduct some of the testing as part of its annual default management tests. Specifically, Section 4.6 would explain that ICC may test those parts of the Plans that address a Clearing Participant's default, such as business processes and tools, as part of its annual default management tests. With respect to the business processes and tools to address losses not related to a Clearing Participant's default, however, Section 4.6 would clarify that ICC will test those in a separate table-top exercise. ICC will test those parts of the Plans that relate to non-default losses apart from its annual default management tests.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁶ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁷ and Rules 17Ad-22(e)(2)(i), (e)(2)(v), and (e)(3)(ii)⁸ thereunder.

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Credit be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.⁹ Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to the Procedures are consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions.

As discussed above, the proposed rule change would modify the Procedures to require that ICC conduct annual testing of the Plans. Section 4.6 also would detail (i) the ICC personnel responsible for planning and conducting the tests and (ii) the overall scope of the tests. The Commission believes that requiring annual testing and establishing relevant responsibilities for conducting the tests would each help to ensure that ICC tests the Plans at least once every twelve

⁶ 15 U.S.C. 78s(b)(2)(C).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 17 CFR 240.17Ad-22(e)(2)(i), (e)(2)(v), and (e)(3)(ii).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

months. The Commission further believes that the proposed scope for the tests would help to ensure that the tests identify any possible issues with, or improvements to, the Plans. Thus, the Commission believes that the proposed rule change would help to ensure that ICC maintains and enforces an effective Recovery Plan and an effective Wind-Down Plan.

The Commission believes that ICC's Recovery Plan is designed to help ICC promote the prompt and accurate clearance and settlement of securities transactions, by providing a roadmap for actions it may employ to monitor and manage its risks, and, as needed, to stabilize its financial condition in the event those risks materialize. The Commission similarly believes ICC's Wind-Down Plan is designed to help ICC to promote the prompt and accurate clearance and settlement of securities transactions by providing a roadmap to wind-down as needed. The Commission believes the actions set forth in the Plans would help to ensure the availability of ICC's services to the marketplace in the event of a recovery or wind-down, while reducing disruption to the operations of Clearing Participants and financial markets.¹⁰ The Commission thus believes both Plans would help ICC to avoid disruption to its operations, and therefore promote ICC's ability to promptly and accurately clear and settle transactions.

Because the proposed rule change would help ICC to maintain, enforce, and improve the Plans, and because the Commission believes the Plans would promote the prompt and accurate clearance and settlement of securities transactions, the Commission therefore believes the

¹⁰ For a further discussion of the Plans, see Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Recovery Plan and the ICC Wind-Down Plan, Exchange Act Release No. 91806 (May 10, 2021), 86 FR 26561 (May 14, 2021) (SR-ICC-2021-005).

proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.¹¹

B. Consistency with Rules 17Ad-22(e)(2)(i) and (v)

Rules 17Ad-22(e)(2)(i) and (v) require ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.¹² The Commission believes the governance arrangements for testing the Plans, as discussed above, would be clear and transparent and would specify clear and direct lines of responsibility. For example, the ROO would, among other things, have overall responsibility for planning and coordinating the execution of each test; work with other members of the Close-Out Team to determine the scope of each the test; and collate and summarize the results of each test. The Close-Out Team would be responsible for executing the tests, capturing the results of the tests, and providing the results to the ROO. The Board would review the scope and format prior to the execution of each test as well as the results of each test. The Commission believes overall these arrangements would be clear and transparent and specify clear and direct responsibilities for the ROO, Close-Out Team, and Board, consistent with Rules 17Ad-22(e)(2)(i) and (v).¹³

C. Consistency with Rule 17Ad-22(e)(3)(ii)

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

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 17 CFR 240.17Ad-22(e)(2)(i), (v).

¹³ 17 CFR 240.17Ad-22(e)(2)(i), (v).

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.¹⁴ As discussed above, the Commission believes the proposed rule change would help ICC to maintain, enforce, and improve the Plans. The Commission further believes that the Plans generally would provide for the recovery and orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.¹⁵ The Commission therefore believes that the proposed rule change, in helping to maintain, enforce, and improve the Plans, would be consistent with Rule 17Ad-22(e)(3)(ii).¹⁶

¹⁴ 17 CFR 240.17Ad-22(e)(3)(ii).

¹⁵ For a further discussion of the Plans, see Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Recovery Plan and the ICC Wind-Down Plan, Exchange Act Release No. 91806 (May 10, 2021), 86 FR 26561 (May 14, 2021) (SR-ICC-2021-005).

¹⁶ 17 CFR 240.17Ad-22(e)(3)(ii).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act, and Rules 17Ad-22(e)(2)(i), (e)(2)(v), and (e)(3)(ii) thereunder.¹⁷

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁸ that the proposed rule change (SR-ICC-2023-008), be, and hereby is, approved.¹⁹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Lynn Taylor,

Assistant Secretary.

¹⁷ 15 U.S.C. 78q-1(b)(3)(F); 17 CFR 240.17Ad-22(e)(2)(i), (e)(2)(v), and (e)(3)(ii).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁰ 17 CFR 200.30-3(a)(12).