

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100335; File No. SR-ICC-2024-004)

June 14, 2024

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the ICC Recovery Plan and the ICC Wind-Down Plan

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4,² notice is hereby given that on June 4, 2024, 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. On June 6, 2024, ICE Clear Credit filed Amendment No. 1 to the proposed rule change to make certain changes to the narrative description of the proposed changes.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 (hereafter “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,

¹ 15 U.S.C. 78s(b)(1)

² 17 CFR 240.19b-4

³ Amendment No. 1 inserts a bullet point to the “ICC Recovery Plan” paragraph of the Form 19b-4 and the Exhibit 1A with the following text, “description of Guaranty Fund Replenishment in Section VIII.B;”. Amendment No. 1 also removes the same bullet point from the “ICC Wind-Down Plan” paragraph of the Form 19b-4 and Exhibit 1A.

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.

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 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.

(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).⁵ 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.

⁴ 17 CFR 240.17Ad-22(e)(3)(ii).

⁵ 17 CFR 240.17Ad-22(e)(3)(ii).

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 the addition of new ICC clearing participants ("CP") (Intesa Sanpaolo S.p.A. and Royal Bank of Canada), the addition of British Pounds Sterling cash ("GBP") as acceptable client-related initial margin, the removal of references to ICE Clear Europe ("ICEU") Credit Default Swap ("CDS") clearing as that service has closed, and a change to the Managers of the ICC Board of Managers (the "Board").

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, 2023, 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:

- description of an ICC Independent Director in Section IV.C.;
- data regarding ICC revenues, volumes, and expenses in Section IV.D.;
- MLE Interconnections in Section VI.;
- ICC Third-Party Systems in Section VI.A.;

- description of services provided to ICC by Intercontinental Exchange, Inc. in Section VI.;
- ICC personnel and facilities in Section VI.A.;
- addition of Jacksonville Facilities in Section VI.A.;
- description of ICC in-house systems in Section VI.A.;
- identification of ICC's counterparties in the Counterparty Chart in Section VI.B.;
- description of monitoring mechanisms for CP default in Section VII.A.;
- description of initial default auction in Section VIII.A.;
- direct infusion of cash to ICC from ICE Group in Section VIII.B.;
- reduce or eliminate dividend payment to ICE Holding in Section VIII.B.;
- renegotiation of fee cap on transaction and clearing fees in Section VIII.B.;
- amend outsourcing agreements in Section VIII.B.;
- reduce ICC headcount in Section VIII.B.;
- elimination of bonuses in Section VIII.B.;
- waiver/suspension of ICC lease payments in Section VIII.B.;
- change in Management contact regarding capital infusion from ICE Group to ICC in Section VIII.B.;
- description of Guaranty Fund Replenishment in Section VIII.B.;
- description of financial resources for recovery in Section X.;
- ICC and ICE Group financial information in Section XI.;

- key ICC reports and descriptions, Exhibit 35, in Section XII.B⁶; and
- Financial service providers that hold CP cash and collateral in Appendix C in Section XIII.

ICC proposes the addition of two new CP's in Section IV. B. Specifically, ICC proposes to add new CP Intesa Sanpaolo S.p.A, which became effective on May 3, 2023. Also, ICC proposes to add new CP Royal Bank of Canada, which became effective on April 15, 2024.

Also, ICC proposes the addition of GBP as acceptable client-related initial margin in Section IV.B and Section IV.E. In response to the addition of GBP, ICC proposes to revise Section IV.E., to clarify the description of ICC's collateral valuation process to all collateral types.

Also, ICC proposes the removal of references to ICEU CDS clearing in Section V.C. as ICEU closed its CDS clearing services on or about October 21, 2023.

Additionally, ICC proposes modifications to reflect the change in the Non-Independent Managers to the Board, in Section IV.C. Specifically, ICE US Holding Company L.P. ("ICE US Holding") replaced former Non-Independent Manager Christopher Edmonds with Elizabeth King, Chief Regulatory Officer, and President of ICE's Sustainable Finance business. Also, ICC proposes minor updates to Section VIII.B. to reflect the change of the Managers as described above.

⁶ Several decommissioned reports have been removed from the list: 'DTCC Vendor Credit Terminations' (information no longer relevant to ICC); 'Other Firms Trades Report' (report replaced with FIX protocol messages); 'Index Participant Missed Quotes Surveillance Report' (information available in another key report) and 'Index Participant Submission Detail Report' (information available in another key report). In addition, the title of two reports was revised to better reflect in the information contained therein. Finally, two new reports were added to the list, both related to exercised/assigned index swaptions.

ICC proposes minor updates to promote clarity and consistency in the ICC Recovery Plan. In Section VII.A., ICC proposes the addition of a Securities and Exchange Commission regulation cite (17 CFR § 240.17Ad-22(e)(4)) to reflect and reference the applicable regulations more accurately.

Finally, ICC proposes minor typographical fixes in the ICC Recovery Plan including grammatical and formatting changes.

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 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 the addition of new CP's (Intesa Sanpaolo S.p.A. and Royal Bank of Canada), and the removal of references to ICEU CDS clearing as that service has closed, and a change to the Managers of the Board.

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, 2023, 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.;
- description of an ICC Independent Director in Section IV.B.;
- MLE Interconnections in Section VII.;

- Material legal entity chart in Section VII.;
- ICC personnel and facilities in Section VII.C.;
- description of ICC in-house systems in Section VII.C.;
- identification of ICC's counterparties in the ICC Counterparty Chart VII.D.;
- financial resources to support wind-down in Section IX.; and
- Banking Institutions and Example Proportion of Holdings charts in Section XI.C.

Additionally, ICC proposes the addition of two new CP's in Section IV. A. Specifically, ICC proposes to add new CP Intesa Sanpaolo S.p.A, which became effective on May 3, 2023. Also, ICC proposes to add new CP Royal Bank of Canada, which became effective on April 15, 2024.

Also, ICC proposes the removal of references to ICEU CDS clearing in Section VII.C. as ICEU successfully completed the close-out process on or about October 21, 2023.

Additionally, ICC proposes modifications to the non-independent Board of Managers and the titles of such Managers, in Section IV.B. Specifically, ICE US Holding Company L.P. ("ICE US Holding") did not re-appoint Christopher Edmonds as an ICC non-independent manager because Mr. Edmonds has expanded his role within ICE to include leading ICE's Fixed Income and Data services business segment. ICE US Holding appointed Elizabeth King, Chief Regulatory Officer, and President of ICE's Sustainable Finance business as the new ICC non-independent Manager.

ICC proposes additional updates and edits to promote clarity and consistency in the ICC Wind-Down Plan. 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 Act⁷ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.⁸ In particular, Section 17A(b)(3)(F) of the Act⁹ requires that the rule change be consistent with the prompt and accurate clearance 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, updating new CP's, removing ICEU references, for recovery and wind-down. To support and enhance the implementation of the Plans, additional language clarifications or edits are included

⁷ 15 U.S.C. 78q-1.

⁸ 17 CFR 240.17Ad-22.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

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.¹⁰

Rule 17Ad-22(e)(3)(ii)¹¹ 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,

¹⁰ *Id.*

¹¹ 17 CFR 240.17Ad-22(e)(3)(ii).

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. 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).¹²

Rule 17Ad-22(e)(15)¹³ 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)¹⁴; and (iii) maintain a

¹² *Id.*

¹³ 17 CFR 240.17Ad-22(e)(15).

¹⁴ 17 CFR 240.17Ad-22(e)(3)(ii).

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).¹⁵

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 includes information on the financial resources maintained by ICC for recovery and to support wind-down in compliance with relevant regulations and include procedures to follow in case of any shortfall. As such, ICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(15).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 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 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.

¹⁵ 17 CFR 240.17Ad-22(e)(15)(ii).

¹⁶ 17 CFR 240.17Ad-22(e)(15).

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 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 email to rule-comments@sec.gov. Please include file number SR-ICC-2024-004 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-2024-004. 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.ice.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-2023-014 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF 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.

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17 CFR 200.30-3(a)(12).