

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91439; File No. SR-ICC-2021-005)

March 30, 2021

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 March 23, 2021, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission the proposed rule change described in Items I, II and III below, which Items have been prepared 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 update and formalize the ICC Recovery Plan and the ICC Wind-Down Plan (collectively, the “Plans”). 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 and discussed any comments it 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes to update and formalize 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 update and formalize the Plans 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 proposed 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. The purpose of the document is to describe the actions that would be taken to (i) restore ICC to a stable and sustainable condition in the event that it came under severe stress and (ii) maintain effective arrangements for ensuring that losses that threaten ICC's viability as a going concern are allocated. The proposed Recovery Plan is divided into 14 sections, which are detailed below.

The proposed Recovery Plan provides necessary background and context regarding ICC for recovery planning. Section 1 serves as an introduction that summarizes

³ 17 CFR 240.17Ad-22(e)(3)(ii).

key aspects of ICC’s plan for recovery and explains the plan’s purpose. The Recovery Plan builds on ICC’s existing Rules and policies and procedures and describes the recovery tools available to ICC to continue to provide its sole critical operation, CDS clearing services. Section 2 provides an overview of ICC and the regulation to which it is subject, including key information regarding ICC’s ownership structure and regulatory registrations and designations. Section 3 discusses the regulatory requirements applicable to the Recovery Plan, including regulatory guidance from the Commission that ICC considered in writing the plan and applicable regulatory obligations, such as those under Rule 17ad-22(e)(3)(ii).⁴

The proposed Recovery Plan provides fundamental information about ICC’s organization and operation. Section 4 discusses the legal entities that are material to ICC for the Recovery Plan and the requirements for ICC’s Clearing Participants (“CPs”), such as operational capacity, financial responsibility and capital requirements. Section 4 also sets forth the governance arrangements and committees that have a direct and indirect role in default management and recovery, including the roles and responsibilities of the Board, Risk Committee, and CDS Default Committee, among others. The CDS Default Committee is responsible for assisting ICC during the execution of certain default management and recovery procedures and convenes upon the declaration of default. Section 4 details key performance metrics in respect of the services that ICC provides and ICC’s management of collateral, including the forms of collateral that ICC accepts to satisfy initial margin (“IM”) and guaranty fund (“GF”) requirements and the monitoring

⁴ Id.

of collateral counterparties. Section 5 analyzes critical services that are necessary to continue daily operations of clearing services and are provided to ICC by Intercontinental Exchange, Inc. (“ICE”) or external third parties.

The proposed Recovery Plan details interconnections and interdependencies between ICC and other entities, including operational and financial interconnections, in Section 6. The Recovery Plan considers the interconnection between ICE and ICC and details IT systems and applications critical to ICC’s clearing operations. The Recovery Plan describes how ICC monitors financial entities that have multiple roles and relationships with ICC. Section 6 further analyzes ICC’s contractual arrangements in the context of continuing services during recovery.

The proposed Recovery Plan describes the potential stress scenarios that may prevent ICC from being able to meet obligations and provide services and the recovery tools available to ICC to address these stress scenarios. Section 7 categorizes such stress scenarios into (i) uncovered credit losses and/or liquidity shortfalls triggered by a CP or multiple CPs defaulting (“CP default stress scenario”) and (ii) stress triggered by general business risks, operational risks, or other risks that may threaten ICC’s viability as a going concern, other than a CP default (“non-CP default stress scenario”). Section 7 discusses the monitoring mechanisms for both categories of scenarios and the process of notifying regulators of the initiation of the Recovery Plan. In Section 8, ICC defines the point at which recovery begins and ICC activates the Recovery Plan as well as who declares the activation of the Recovery Plan.

Section 8 describes the recovery tools available to ICC. The tools to address credit losses in a CP default stress scenario are set forth in ICC's Rules and procedures and would be summarized in the proposed Recovery Plan. Such tools include:

- Auctions to close out a defaulter's portfolio ((ICC Rule 20-605(d)(v) and (f)(ii)). To incentivize competitive bidding, contributions of non-defaulting CPs are subject to "juniorization" and applied using a defined default auction priority based on the competitiveness of their bids.⁵
- An insurance policy covering specified losses resulting from a CP default ("CP default insurance") (ICC Rule 802).
- CPs' obligation to replenish their GF contribution to the required level in the event of any use of the GF contributions of non-defaulting CPs (ICC Rule 803(a)) and to make assessment contributions to the GF following a CP default and the consumption of the pre-funded GF (ICC Rule 803(b)), subject to a cap. If the cap is reached, CPs may be required to provide additional IM (ICC Rule 806(e)) to ensure that ICC maintains compliance with minimum regulatory financial resources requirements.
- Partial tear-up of remaining positions (ICC Rules 20-605(f)(iii) and 809) where ICC terminates positions of non-defaulting CPs that exactly offset those in the defaulter's remaining portfolio.

⁵ ICC's Default Auction Procedures - Initial Default Auctions and Secondary Auction Procedures are available at the following:
https://www.theice.com/publicdocs/ICC_Default_Auction_Procedures.pdf and
https://www.theice.com/publicdocs/ICC_Secondary_Auction_Procedures.pdf.

- Reduced gains distributions (“RGD”) (ICC Rule 808) for up to five consecutive business days, allowing ICC to reduce payment of variation, or mark-to-market, gains that would otherwise be owed to CPs, as ICC attempts a secondary auction or conducts a partial tear-up.

Section 8 also discusses the tools that are available to ICC to address a situation where ICC experiences liquidity shortfalls triggered by a default of one or more CPs and has insufficient liquid resources in the proper currency to meet payments obligations. These tools include entering into transactions to exchange certain sovereign debt securities for cash or to exchange U.S. dollar cash for Euro cash under one of ICC’s committed repurchase or committed foreign exchange agreements, respectively.

Additionally, Section 8 discusses the tools that would be available to ICC in the event that ICC experiences severe stress triggered by a non-CP default stress scenario, including the application of resources from ICC (“Loss Resources”) and contributions from CPs (“Loss Contributions”) to address certain investment and custodial losses. ICC Rule 811 provides a mechanism for allocating investment losses and custodial losses as between ICC and CPs, with ICC being responsible for a first loss position up to the amount of defined resources and with CPs being responsible for the remaining loss, in proportion to and capped at their margin and GF contributions. Additional tools to address non-CP default stress scenarios include insurance coverage, seeking additional capital through the ICE group, renegotiating certain agreements, and reducing personnel and other expenses.

The proposed Recovery Plan further memorializes key information for the purposes of recovery planning. In Section 9, ICC proposes to describe the governance

arrangements that provide oversight and direction in respect of the Recovery Plan, including design, implementation, testing, review, and on-going maintenance. Section 10 analyzes the financial resources maintained by ICC for recovery in compliance with relevant regulations, including the procedures to follow in case of any shortfall. This section also discusses the timing for implementing ICC's recovery tools and ICC's projected estimated recovery and wind-down costs. Section 11 provides financial information relevant to ICC and ICE. Section 12 sets forth key systems used by ICC to generate reports to monitor and support clearing operations. The appendices in Section 13 include a glossary, diagrams and charts of clearing processes and financial service providers, and analyses related to different stress scenarios and recovery tools. Section 14 holds an index of exhibits to the proposed Recovery Plan.

ICC Wind-Down Plan

The proposed Wind-Down Plan is designed to establish how ICC could be wound-down in an orderly manner. The proposed Wind-Down Plan would be used in the event that the recovery actions in the proposed Recovery Plan failed to preserve ICC's viability as a going concern (and therefore recovery was not possible) and resolution had not been triggered. The proposed Wind-Down Plan could also be used in the event that ICC made a business decision to exit all clearing activities. The document is divided into 12 sections, which are detailed below.

Similar to the proposed Recovery Plan, the proposed Wind-Down Plan provides necessary background and context regarding ICC for wind-down planning. Section 1 serves as an introduction that summarizes key aspects of the Wind-Down Plan and explains the plan's purpose. Section 2 provides an overview of ICC and the regulation to

which it is subject. Section 3 describes the regulatory requirements applicable to the Wind-Down Plan, including regulatory guidance from the Commission that ICC considered in writing the plan and applicable regulatory obligations, such as those under Rule 17ad-22(e)(3)(ii).⁶ Section 4 sets out ICC's CPs and the governance arrangements that are relevant to wind-down, including the roles and responsibilities of the Board and Risk Committee.

The proposed Wind-Down Plan describes the potential stress scenarios that may prevent ICC from being able to meet obligations and provide services, which may lead to wind-down. Section 5 categorizes the stress scenarios into (i) CP default stress scenarios and (ii) severe stress triggered by general business risks, operational risks, or other risks that may threaten ICC's viability as a going concern, other than a CP default ("non-CP default severe stress scenarios"). Section 5 also discusses the triggering events for wind-down, such as a critical reduction in market participation or a critical reduction in ICC's financial resources below regulatory capital requirements. With respect to a business decision to wind-down, the triggering event would be the Board's decision to exit the business.

The proposed Wind-Down Plan provides the framework for wind-down and detailed plans for each wind-down option. Section 6 examines ICC's wind-down options that consist of a transfer of CDS clearing activities from ICC to an alternative clearinghouse, the sale of ICC to another entity, or the termination of open positions. Under the plan, before a wind-down decision would be made by the Board, ICC would

⁶ 17 CFR 240.17Ad-22(e)(3)(ii).

consult with market participants, potential alternative clearing houses, and regulators, among others. The specific situation giving rise to the wind-down, together with the results of the consultation, would inform the specific wind-down option and corresponding execution plan. The Board would consider and approve the execution plan prior to implementation. Section 6 also details the plans for executing each wind-down option, including the approach, timeline, potential impediments, and other considerations. For transfer to be a viable wind-down option, ICC would need to locate an appropriate alternative clearing house that was willing and able to accept the transferred positions. Wind-down through the sale option would most likely be applicable in a non-default stress scenario where the financial assets of ICC became constrained and the recovery tools failed to restore ICC's capital. Regarding termination, if CPs could not agree on an approach for liquidating/removing open cleared positions at ICC or did not fully voluntarily liquidate/remove their open positions by the deadline, the Board would tear-up any remaining open positions as permitted under ICC Rule 810. Under the proposed Wind-Down Plan, to the extent possible, the ability to continue providing centralized clearing of CDS with as little disruption as possible would be the primary determinant of feasibility for ICC's wind-down options. If continuation was not feasible, the primary determinant would be the ability to discontinue CDS clearing services in an orderly manner with minimum negative impact to the marketplace and stakeholders. Where the Board makes a business decision to wind-down, wind-down would be executed using one or more of the wind-down options listed above. Section 6 further discusses potential obstacles to an orderly wind-down.

The proposed Wind-Down Plan also provides fundamental information about ICC's organization and operation for the purposes of wind-down planning. Section 7 describes interconnections and interdependencies between ICC and other entities. Similar to the Recovery Plan, Section 7 discusses the legal entities that are material to ICC for the Wind-Down Plan, the critical services provided to ICC by ICE or external third parties, and ICC's operational and financial interconnections. This section considers the interconnection between ICE and ICC, identifies critical service providers, details IT systems and applications critical to ICC's clearing operations, and identifies financial entities that have multiple roles and relationships with ICC. Section 8 analyzes ICC's contractual arrangements in the context of continuing services during wind-down.

The proposed Wind-Down Plan further memorializes key information with respect to wind-down planning. Section 9 analyzes the financial resources maintained by ICC to support wind-down in compliance with relevant regulations, including the procedures to follow in case of any shortfall. This section also discusses the timing for executing the wind-down options and ICC's projected estimated recovery and wind-down costs. In Section 10, ICC proposes to set out the governance arrangements that provide oversight and direction in respect of the Wind-Down Plan, including design, implementation, testing, review, and on-going maintenance. The appendices in Section 11 contain a glossary, diagrams and charts of clearing processes and financial service providers, and analyses related to different stress scenarios. Section 12 holds an index of exhibits to the proposed Wind-Down Plan.

(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. As discussed herein, the proposed rule change would enhance ICC's ability to effectuate a successful recovery by describing the actions that would be taken to restore ICC to a stable and sustainable condition in the event that it came under severe stress and maintain effective arrangements for ensuring that losses that threaten ICC's viability as a going concern are allocated in the Recovery Plan. The proposed rule change would further enhance ICC's ability to execute an orderly wind-down by establishing the actions that would be taken and the options that would be available to wind-down ICC in an orderly manner in the Wind-Down Plan. The proposed 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,

⁷ 15 U.S.C. 78q-1.

⁸ 17 CFR 240.17Ad-22.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

thereby promoting 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. 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

The proposed rule change would also satisfy the relevant requirements of Rule 17Ad-22.¹¹ Rule 17Ad-22(e)(2)¹² requires, in relevant part, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are (i) clear and transparent; (ii) clearly prioritize the safety and efficiency of the covered clearing agency; (iii) support the public interest requirements of Section 17A of the Act¹³ applicable to clearing agencies, and the objectives of owners and participants; (v) specify clear and direct lines of responsibility; and (vi) consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency. The

¹⁰ Id.

¹¹ 17 CFR 240.17Ad-22.

¹² 17 CFR 240.17Ad-22(e)(2).

¹³ 15 U.S.C. 78q-1.

proposed Plans clearly and transparently set forth the governance arrangements that are relevant to recovery and wind-down, including the roles and responsibilities of the Board, applicable committees, and management. The proposed Plans assign and document responsibility and accountability for key recovery and wind-down decisions, such as activating the Recovery Plan and deciding to wind-down the business, and require consultation or approval from relevant parties. The governance arrangements set out in the documents are designed to provide meaningful consultation with stakeholders regarding key recovery and wind-down actions to ensure consideration of the interests of relevant stakeholders. Such governance arrangements further promote the safety and efficiency of ICC and support the public interest requirements in Section 17A of the Act¹⁴ applicable to clearing agencies, and the objectives of owners and participants, by describing the roles and responsibilities of the Board, committees, and management to ensure that such groups have the appropriate knowledge and integrity necessary to discharge their responsibilities and to clearly prioritize the safety and efficiency of ICC so that it continues to provide safe and sound central counterparty services in the context of recovery or wind-down. As such, ICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(2).¹⁵

Rule 17Ad-22(e)(3)(ii)¹⁶ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal,

¹⁴ Id.

¹⁵ 17 CFR 240.17Ad-22(e)(2).

¹⁶ 17 CFR 240.17Ad-22(e)(3)(ii).

credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses. As discussed above, the proposed 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. The proposed Wind-Down Plan is designed to establish how ICC could be wound-down in an orderly manner should its recovery efforts fail. The proposed Plans establish centralized sources of information on ICC's recovery and wind-down actions, which would promote ICC's ability to carry out a successful recovery or orderly wind-down and would also provide relevant information to authorities needed for the purposes of recovery and wind-down planning. The proposed Recovery Plan includes potential stress scenarios that may prevent ICC from being able to meet obligations and provide services and the recovery tools available to ICC to address such scenarios, which would promote ICC's ability to carry out a successful recovery. The proposed Wind-Down Plan also details potential stress scenarios and their triggering events and the plans for executing each wind-down option. Both Plans include analyses of ICC's contractual arrangements in the context of continuing services during recovery or wind-down. The proposed rule change would thus enhance ICC's recovery efforts and ICC's ability to carry out an orderly wind-down, including by documenting ICC's preparations for recovery and wind-down and by describing the actions that ICC may take to effect a

successful recovery or orderly wind-down, consistent with the requirements of Rule 17Ad-22(e)(3)(ii).¹⁷

Rule 17Ad-22(e)(15)¹⁸ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify monitor, and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency 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 the covered clearing agency'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 the covered clearing agency, as contemplated by the plans established under Rule 17ad-22(e)(3)(ii); 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). The proposed Plans 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 proposed Plans analyze the financial resources maintained by ICC for

¹⁷ Id.

¹⁸ 17 CFR 240.17Ad-22(e)(15).

recovery and to support wind-down in compliance with relevant regulations and include procedures to follow in case of any shortfall. Moreover, the proposed Plans discuss ICC's timing for implementing the recovery tools and for executing the wind-down options as well as ICC's determination of the projected estimated recovery and wind-down costs. These documents, including the analyses and estimations contained therein, are further updated and subject to review and approval by the Board at least annually and ensure 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).¹⁹

(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 and formalize the Plans will apply uniformly across all market participants. 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.

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

¹⁹ Id.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-ICC-2021-005 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-2021-005. 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-2021-005 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).