

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-94650; File No. SR-ICC-2022-004)

April 8, 2022

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 (the “Act”),<sup>1</sup> and Rule 19b-4,<sup>2</sup> notice is hereby given that on April 1, 2022, 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

The principal purpose of the proposed rule change is to revise 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, 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 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).<sup>3</sup> 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 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 composition of the ICC Board of Managers (collectively, the “Board” and each, a “Manager”) and the responsibilities and membership composition of internal committees.

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<sup>3</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

ICC proposes general updates to ensure that the information in the 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, 2021, 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;
- clearing Index Swaptions by ICC in Section IV.A;
- data regarding ICC revenues, volumes, and expenses in Section IV.D;
- ICC personnel and facilities in Section VI.A;
- financial resources for recovery in Section X;
- ICC and ICE Group financial information in Section XI; and
- Financial service providers (“FSPs”) that hold Clearing Participant (“CP”) cash and collateral in Appendix C in Section XIII.

Additionally, ICC proposes to amend the composition of the Board and the descriptions of internal committees to reflect changes that impacted ICC in 2021. In Section IV.C.1, ICC proposes to change the Board size from eleven to nine managers, consistent with the adoption of the Sixth Amended and Restated Operating Agreement of ICC in 2021 (the “Sixth A&R Operating Agreement”), and to revise Manager titles as necessary.<sup>4</sup> In Section IV.C.3, the proposed changes update the responsibilities and

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<sup>4</sup> See SR-ICC-2021-017 for additional information on the adoption of the Sixth

membership composition of the Participant Review Committee (“PRC”) and Credit Review Subcommittee of the PRC (“CRS”), which are internal committees that assist in fulfilling counterparty review responsibilities, consistent with changes to their charters in 2021.<sup>5</sup> ICC proposes corresponding changes in Section VI.B.1 to describe the advisory role of the CRS in making recommendations to the PRC and the role of the PRC in approving FSPs.

ICC proposes additional updates to promote clarity and consistency in the Recovery Plan. Amended Section IV.E.4 notes that ICC monitors FSPs daily, intraday, and monthly, consistent with the processes described in the ICC Counterparty Monitoring Procedures.<sup>6</sup> In Section VII.B, ICC proposes to remove a metric that is no longer utilized to measure ICC performance and to update a reference to a policy section. Amended Section VII.C specifies that ICC will make required disclosures pursuant to applicable regulations once the Recovery Plan is initiated and includes updated regulatory contacts. In Section VIII.B.2, ICC proposes minor language clarifications in describing the purpose of its Liquidity Risk Management Framework. In Section VIII.B.3, ICC proposes updates regarding the insurance coverage maintained at the ICE Group level, which may be used as a recovery tool in a non-CP default scenario.

ICC proposes changes related to seeking additional capital from the ICE Group in Section VIII.B.3, which is another recovery tool that may be used in a non-CP default

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A&R Operating Agreement.

<sup>5</sup> See SR-ICC-2021-015 for additional information on the roles and responsibilities of the PRC and CRS.

<sup>6</sup> See SR-ICC-2021-021 for additional information on ICC’s counterparty monitoring processes and procedures.

scenario. The proposed changes include updated financial information, which is intended to establish that the ICE Group is capable of making such infusion. Given the changes in Board composition, ICC proposes revised procedures for seeking such additional capital, including the individual within the ICE Group with whom such discussions would begin. The proposed changes identify the role of this individual within the ICE Group and update the composition of certain ICE Group boards. Additionally, ICC proposes to include updated financial information that is relevant to the execution of other recovery tools that may be utilized in a non-CP default scenario.

ICC proposes additional minor edits for clarity and consistency. In Section IX, ICC proposes to clarify that the Recovery Plan is made available to regulators in accordance with relevant regulations and to incorporate a reference to the ICC Default Management Procedures for details on ICC's default management testing. 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 Recovery Plan as well as conforming changes in in the Wind-Down Plan, including updates to entity names, and grammatical and formatting changes.

#### *ICC Wind-Down Plan*

The Wind-Down Plan is designed to establish how ICC could be wound-down in an orderly manner. ICC proposes corresponding changes to the 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 changes to the composition of the Board.

ICC proposes general updates to ensure that the information in the 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, 2021, 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;
- ICC personnel and facilities in Section VII.C;
- financial resources to support wind-down in Section IX; and
- FSPs that hold CP cash and collateral in Appendix C in Section XI.

ICC also proposes amendments with respect to the composition of the Board to reflect changes that impacted ICC in 2021. In Section IV.B.1, ICC proposes to change the Board size from eleven to nine managers, consistent with the adoption of the Sixth A&R Operating Agreement in 2021, and revise manager titles as needed.

ICC proposes additional updates and edits to promote clarity and consistency in the Wind-Down Plan. Amended Section VI.A specifies that ICC will make required disclosures pursuant to applicable regulations once the decision to wind-down is made and includes updated regulatory contacts. Furthermore, given the changes in Board composition, ICC proposes revised procedures for seeking certain required consultations or approvals identified in the Wind-Down Plan, including the individual within the ICE Group with whom such discussions would begin. The proposed changes identify the role of this individual within the ICE Group and include information on the composition of a relevant ICE Group board. In Section X, ICC proposes to note that the Wind-Down Plan

is made available to regulators in accordance with relevant regulations and to clarify the testing of the 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 Act<sup>7</sup> and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.<sup>8</sup> In particular, Section 17A(b)(3)(F) of the Act<sup>9</sup> 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, and financial resources for recovery and wind-down. The proposed amendments also reflect and relate

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<sup>7</sup> 15 U.S.C. 78q-1.

<sup>8</sup> 17 CFR 240.17Ad-22.

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

to changes that impacted ICC in the past year, including changes to the Board composition from the adoption of the Sixth A&R Operating Agreement and the responsibilities and membership composition of internal committees based on their amended charters. Such changes ensure that the Plans clearly and accurately set out the functions of the Board and committees to remain effective and to ensure that these groups carry out their required functions. 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.<sup>10</sup>

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<sup>10</sup> Id.



The proposed rule change would also satisfy the relevant requirements of Rule 17Ad-22.<sup>11</sup> Rule 17Ad-22(e)(2)<sup>12</sup> requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are (i) clear and transparent; (iii) support the public interest requirements of Section 17A of the Act<sup>13</sup> applicable to clearing agencies, and the objectives of owners and participants; and (v) specify clear and direct lines of responsibility. The 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 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. Given the change in Board composition, the proposed changes update procedures for seeking additional capital in a recovery scenario and update procedures for seeking required consultations or approvals in a wind-down scenario from the ICE Group. The amendments ensure that the procedures for implementing these actions in a recovery or wind-down scenario are up-to-date, transparent, and effective such that responsible parties can act promptly without unnecessary delay. Moreover, the governance arrangements in the Plans promote the safety and efficiency of ICC and support the public interest requirements in Section 17A

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<sup>11</sup> 17 CFR 240.17Ad-22.

<sup>12</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>13</sup> 15 U.S.C. 78q-1.

of the Act<sup>14</sup> applicable to clearing agencies, and the objectives of owners and participants, by describing the roles and responsibilities of relevant stakeholders to ensure that such groups or individuals are able to discharge their responsibilities. As such, ICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(2).<sup>15</sup>

Rule 17Ad-22(e)(3)(ii)<sup>16</sup> 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 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 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, updated information regarding recovery tools, including updated procedures for seeking additional capital from the ICE Group, and

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<sup>14</sup> Id.

<sup>15</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>16</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

updated procedures for seeking required consultations or approvals in a wind-down scenario. 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).<sup>17</sup>

Rule 17Ad-22(e)(15)<sup>18</sup> 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)<sup>19</sup>; 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-

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<sup>17</sup> Id.

<sup>18</sup> 17 CFR 240.17Ad-22(e)(15).

<sup>19</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

22(e)(15)(ii).<sup>20</sup> 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 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).<sup>21</sup>

(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.

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<sup>20</sup> 17 CFR 240.17Ad-22(e)(15)(ii).

<sup>21</sup> 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2022-004 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-2022-004. 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-2022-004 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.<sup>22</sup>

Jill Peterson  
Assistant Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).