

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94983; File No. SR-ICC-2022-004)

May 25, 2022

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

I. Introduction

On April 1, 2022, CE Clear Credit LCC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the ICC Recovery Plan and the ICC Wind-Down Plan (collectively, the “Plans”). The proposed rule change was published for comment in the Federal Register on April 14, 2022.³ 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

A. Background

As a “covered clearing agency,”⁴ ICC is required to, among other things, “establish, implement, maintain and enforce written policies and procedures reasonably

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 Recovery Plan and the ICC Wind-Down Plan, Exchange Act Release No. 94650 (Apr. 8, 2022); 87 Fed. Reg. 22276 (Apr. 14, 2022) (File No. SR-ICC-2022-004) (“Notice”).

⁴ The term “covered clearing agency” is defined in Rule 17Ad-22(a)(5), 17 CFR 240.17Ad-22(a)(5). ICC became subject to the requirements in Rule 17Ad-22(e) with the amendment to the definition of the term “covered clearing

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 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.”⁵ The Commission has previously clarified that it believes that such recovery and wind-down plans are “rules” within the meaning of Exchange Act Section 19(b) and Rule 19b-4 thereunder because such plans would constitute changes to a stated policy, practice, or interpretation of a covered clearing agency.⁶ Accordingly, a covered clearing agency, such as ICC, is required to file its plans for recovery and orderly wind-down with the Commission.⁷ Recovery and Wind-Down Plans have been in place at ICC for a

agency.” See Definition of “Covered Clearing Agency,” Exchange Act Release No. 88616 (Apr. 9, 2020), 85 Fed. Reg. 28853 (May 14, 2020) (File No. S7-23-16).

⁵ 17 CFR 240.17Ad-22(e)(3)(ii).

⁶ Standards for Covered Clearing Agencies, Exchange Act Release No. 78961 (Sep. 28, 2016), 81 Fed. Reg. 70786, 70809 (Oct. 13, 2016) (File No. S7-03-14).

⁷ ICC became a “covered clearing agency” following a change in the definition of the term in Rule 17Ad-22(a)(5). The previous definition of “covered clearing agency” in Rule 17Ad-22(a)(5) stated that “covered clearing agency” means a designated clearing agency or a clearing agency involved in activities with a more complex risk profile for which the Commodity Futures Trading Commission is not the Supervisory Agency as defined in Section 803(8) of the Payment, Clearing and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*). Under this definition, ICC was not a covered clearing agency. Under the revised definition, “covered clearing agency” means a registered clearing agency that provides the services of a central counterparty or central securities depository. Under the revised definition, ICC is a covered clearing agency. See Definition of “Covered Clearing Agency”, Exchange Act Release No. 88616 (Apr. 9, 2020), 85 Fed. Reg. 28853, 28854-55 (May 14, 2020) (File No. S7-23-16).

number of years and approved by the Commission on May 10, 2021 for the first time since becoming a “covered clearing agency” under the definition in Rule 17Ad-22(a)(5).⁸

B. Recovery Plan

The proposed rule change would make general updates to ensure that the information in the Recovery Plan is current and relates to changes that impacted ICC in the past year.⁹ The Recovery Plan would be updated to specify that the information provided is current as of December 31, 2021, unless otherwise stated.

The proposed rule change would make the following updates related to ICC’s ownership and operations:

- In Section II.A, add one additional entity to the list of companies owned by ICC’s parent.
- In Section IV.A, adds iTraxx Index Swaptions as an example of the Index Swaptions products for which ICC provides clearing services.
- In Section IV.D, updates numbers for ICC’s revenues, volumes, and expenses and includes those for Index Swaptions.
- In Section VI.A, updates locations of facilities and personnel headcount and functions.

⁸ 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 Fed. Reg. 26561 (May 14, 2021) (File No. SR-ICC-2021-005).

⁹ The descriptions of the Recovery and Wind-Down Plans are substantially excerpted from the Notice. Moreover, capitalized terms not otherwise defined herein have the meanings assigned to them in ICC Rules (“Rules”) or the Plans.

- In Section X, updates the projected recovery and wind-down costs and regulatory capital.
- In Section XI, updates ICC's and ICE Group's financial statements.
- In Section XIII, updates the percentages held by financial services providers of clearing participant cash and collateral.

The proposed rule change would also revise Section IV.C.1 to reflect (i) the change of the Board size from eleven to nine managers, consistent with the adoption of the Sixth Amended and Restated Operating Agreement of ICC in 2021, (ii) the reduction of the number of independent and non-independent managers by one, (iii) the revision of manager titles, and (iv) the removal of two specific managers.

The proposed rule change would also change Section IV.C.3 to update the description of the responsibilities and 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. The proposed rule change would also make corresponding changes in Section VI.B.1 to describe the advisory role of the CRS in making recommendations to the PRC and the required role of the PRC in approving FSPs.

The proposed rule change would also amend Section IV.E.4 to state that ICC monitors the FSPs daily, intraday, and monthly, consistent with the processes described in the ICC Counterparty Monitoring Procedures.

ICC would revise Section VII.B to remove discussion of a metric no longer used to measure ICC's performance, and to update the date of a referenced policy.

Under the proposed rule change, Section VII.C would specify that ICC will make required disclosures pursuant to applicable regulations once the Recovery Plan is initiated, and would include updated regulatory contacts. In Section VIII.B.2, the proposed changes would add minor language clarifications in describing the purpose of its Liquidity Risk Management Framework. In Section VIII.B.3, the proposed changes would make updates regarding the insurance coverage maintained at the ICE Group level, which may be used as a recovery tool in a non-clearing participant default scenario.

Under the proposed rule change, Section VIII.B.3 would reflect updated balance sheet information that demonstrates the ability of ICC's parent to make cash infusions to ICC as a recovery tool. Relatedly, the proposed rule change would amend the procedures for seeking such additional capital, including the individual within the ICE Group with whom such discussions would begin. The proposed changes would also identify the role of this individual within the ICE Group and update the description of the composition of certain ICE Group boards. Additionally, the proposed rule change would include updated financial information relevant to the efficacy of several other recovery tools that may be utilized in a non-clearing participant default scenario.

ICC also proposed minor edits for clarity and consistency. Specifically, Section IX would be amended 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. Section XIV would include an updated index of exhibits referring to the current versions of policies and procedures, consistent with updated footnote references. Finally, the proposed rule change would make 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.

C. Wind-Down Plan

The proposed rule changes to the Wind-Down Plan are, in large part, substantially similar to the proposed changes to the Recovery Plan, including general updates, clarifying edits, and amendments to make the information in the Wind-Down Plan current and reflect changes that have impacted ICC in the past year, including changes to the composition of the Board.

Similar to the Recovery Plan, the document would be amended throughout to specify that the information provided is current as of December 31, 2021, unless otherwise stated. Under the proposed rule change, The Wind-Down Plan would also reflect the addition of one entity to the list of companies owned by ICC's parent, as well as updates to facilities and personnel information, the financial resources available to support wind-down, and the percentages of cash and collateral held by FSPs in Appendix C.

Further, as with the Recovery Plan, the proposed changes to the Wind-Down Plan would update the description of the composition of the Board to reflect changes from 2021, including changes to the Board size from eleven to nine managers and revisions to manager titles. The proposed changes also describe 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 would identify the role of this individual within the ICE Group and include information on the composition of a relevant ICE Group board. The proposed

changes would also specify that ICC will make required disclosures pursuant to applicable regulations once the decision to wind-down is made, and update ICC's regulatory contacts.

Finally, Section X would be amended to note that the Wind-Down Plan is made available to regulators in accordance with relevant regulations and to state broadly that the testing of the Wind-Down Plan considers various options. In Section XII, the proposed rule change would update the index of exhibits to reflect the current versions of policies and procedures.

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.¹⁰ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹¹ and Rule 17Ad-22(e)(2)(v),¹² and (e)(3)(ii).¹³

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 ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and

¹⁰ 15 U.S.C. 78s(b)(2)(C).

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 17 CFR 240.17Ad-22(e)(2) (v).

¹³ 17 CFR 240.17Ad-22(e)(3)(ii).

transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest.¹⁴

As noted above, the proposed rule changes relate mainly to updating the Recovery and Wind-Down Plans with current information about ICC's facilities, finances, operations, and Board. The Commission believes that by providing updated numbers for ICC's revenues, volumes, and expenses, including projected recovery and wind-down costs and regulatory capital, the proposed changes will enhance ICC's ability to monitor its finances and compare its regulatory capital to its estimated recovery and wind-down costs. This in turn will help ensure ICC has the financial resources to promptly and accurately clear and settle transactions during recovery and, if necessary, conduct an orderly wind-down.

Further, the Commission believes that adding iTraxx Index Swaptions to the list of Index Swaptions products for which ICC provides clearing services, adding the additional entity to the list of ICC parent-owned companies, and providing an updated exhibit index will generally support those utilizing the Plans by providing users of the Plans a current overview of ICC's full operations, including all of its businesses and cleared products.

As noted above, the proposed rule change would also update description of the Board size and its composition as well as the responsibilities and membership composition of the PRC and CRS. The Commission believes that these proposed changes would strengthen the Plans by ensuring that they delineate responsible

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

individuals and their duties, which will support efficient operation of ICC, including during recovery or wind-down by ensuring they reflect the Sixth Amended and Restated Operating Agreement of ICC and amended committee charters.

The proposed rule changes would also state that ICC monitors the FSPs daily, intraday, and monthly, consistent with the processes described in the ICC Counterparty Monitoring Procedures and update a metric used to measure ICC's performance. The Commission believes that these changes would enhance ICC's ability to manage its financial resources by ensuring they reflect current ICC's Counterparty Monitoring Procedures, which in turn will enable ICC to promptly and accurately clear and settle securities transactions.

The Commission believes that the proposed changes to specify that ICC will make required disclosures pursuant to applicable regulations once the Plans are initiated, update regulatory contacts, and to state that the Plans are made available to regulators in accordance with relevant regulations enhance ICC's procedures for keeping regulatory authorities informed thereby promoting the protection of investors and the public interest.

As noted above, the proposed rule change would also amend the procedures for seeking additional capital from ICC's parent by including the current individual within the ICE Group with whom such discussions would begin. The proposed changes would also include 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 would identify the role of this individual within the ICE Group. The Commission believes that these proposed changes would strengthen the plans by ensuring those utilizing them have all of the information

necessary to carryout recovery or an orderly wind-down, which in turn would ensure ICC can promptly and accurately clear and settle trades and safeguard of securities and funds which are in its custody or control at these times.

For the reasons stated above, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.¹⁵

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

Rules 17Ad-22(e)(2)(v) requires that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, provide for governance arrangements that specify clear and direct lines of responsibility.¹⁶

The Commission believes that the proposed rule changes help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that specify lines of control and responsibility because they update the number of board members, board composition, titles, and roles of committees.

The Commission also believes that the proposed changes provide clear and direct lines of authority because they identify the individual within the ICE Group with whom discussions for seeking additional capital in recovery from ICC's parent would begin as well as the 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. Further, the Commission believes that proposed changes to

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(e)(2)(v).

certain titles of managers and the removal of former managers promotes governance arrangements that specify lines of control and responsibility by including current information about individuals and their roles.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(2)(v).¹⁷

D. 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 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.¹⁸

The Commission believes that the proposed changes described above that would add current financial, personnel, and board information support ICC's maintenance of plans for the recovery and orderly wind-down of ICC with updated accurate information. For instance, the Commission believes that current financial information provides relevant information to those using the Plans to understand the resources available for recovery or an orderly wind-down. Further, the Commission believes that current information about the Board, updated procedures for seeking additional capital from the

¹⁷ 17 CFR 240.17Ad-22(e)(2)(v).

¹⁸ 17 CFR 240.17Ad-22(e)(3)(ii).

ICE Group, and updated procedures for seeking required consultations or approvals in a wind-down scenario support the utilization of the recovery and wind-down plans with accurate references to personnel and procedures.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(3)(ii).¹⁹

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 Act²⁰ and Rules 17Ad-22(e)(2)(v) and (e)(3)(ii) thereunder.²¹

¹⁹ 17 CFR 240.17Ad-22(e)(3)(ii).

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

²¹ 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3)(ii).

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act²² that the proposed rule change (SR-ICC-2022-004) be, and hereby is, approved.²³

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier
Assistant Secretary

²² 15 U.S.C. 78s(b)(2).

²³ 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).

²⁴ 17 CFR 200.30-3(a)(12).