

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-95603; File No. SR-ICC-2022-010)

August 25, 2022

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the Clearing Rules and the End-of-Day Price Discovery Policies and Procedures

I. Introduction

On July 7, 2022, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its Clearing Rules (the “Rules”) and End-of-Day Price Discovery Policies and Procedures (the “EOD Policy”) to establish an additional class of Clearing Participant. The proposed rule change was published for comment in the Federal Register on July 20, 2022.<sup>3</sup> 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

The proposed rule change would amend the Rules and EOD Policy to establish an additional class of Clearing Participant at ICC, the Associate Clearing Participant (referred to

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Clearing Rules and the End-of-Day Price Discovery Policies and Procedures; Exchange Act Release No. 95279 (July 14, 2022), 87 Fed. Reg. 43351 (July 20, 2022) (File No. SR-ICC-2022-010) (“Notice”).

herein as the “ACP”).<sup>4</sup> In general, an ACP would have the same rights, obligations, and responsibilities as other Clearing Participants (referred to herein as “Full Participants”), except with respect to certain price submissions. Specifically, ICC would permit an ACP to submit prices with respect to certain North American (“NA”) Credit Default Swap (“CDS”) products at the end of the London trading day, rather than at the end of the New York trading day. ICC represents this change is intended to facilitate the participation of United Kingdom and European entities that may be unable to provide price submissions for North American instruments outside of London trading hours.<sup>5</sup> There is no requirement, however, that an entity applying to become an ACP be based in the United Kingdom or Europe.

B. Rules

With respect to the Rules, the proposed rule change would amend Rule 102 and adopt a new Rule 212.

In Rule 102, the proposed rule change would add new defined terms: “Associate Clearing Participant,” “Full Participant,” “NA Instruments,” and “NA Instrument EU EOD Submission.” The term “Associate Clearing Participant” would have the meaning assigned to it in new Rule 212 (as discussed below), while the term “Full Participant” would mean a Clearing Participant other than an ACP. Similarly, the terms “NA Instruments” and “NA Instrument EU EOD Submission” would have the meanings assigned to them in new Rule 212.

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<sup>4</sup> This description is substantially excerpted from the Notice, 87 Fed. Reg. at 43351. Capitalized terms not otherwise defined herein have the meanings assigned to them in the Rules or EOD Policy, as applicable.

<sup>5</sup> Notice, 87 Fed. Reg. at 43351.

New Rule 212 would permit ICC to establish the ACP category of Clearing Participants. Rule 212 would define “ACP” as a Clearing Participant meeting the terms and conditions set out in the new rule. Under Rule 212(a), each ACP would be a Clearing Participant for all purposes under the Rules and ICC Procedures, with and subject to all rights, obligations, limitations, conditions, restrictions, representations, warranties, and acknowledgements of a Clearing Participant, and subject to the initial and ongoing qualifications and requirements for being a Clearing Participant, except as otherwise provided in Rule 212 or the ICC Procedures.

Rule 212(b) would permit ICC to establish a new London end-of-day price submission window for which ACPs would be required to make price submissions with respect to NA Instruments. Rule 212(b) would define “NA Instruments” as Contracts relating to North American reference entities or indices (as identified by ICC) and such other Contracts as ICC may determine. Moreover, Rule 212(b) would define such price submissions submitted by ACPs as “NA Instrument EU EOD Submissions.” Rule 212(b) further would permit ICC to establish firm trade requirements<sup>6</sup> with respect to NA Instrument EU EOD Submissions. Finally, Full Participants could make NA Instrument EU EOD Submissions, but would not be required to do so and would not be subject to firm trade requirements in connection with such submissions.

Certain provisions of Rule 212 would permit ICC to establish different standards and obligations for ACPs as compared to Full Participants. Rule 212(c) would permit ICC to establish different daily deadlines for submission of Trades by ACPs. Rule 212(d) would permit ICC to establish different or supplemental margin requirements or related parameters for ACPs.

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<sup>6</sup> The term “firm trade requirements” refers to ICC’s ability to require that Clearing Participants enter into trades at the prices they submit to ICC. ICC uses firm trade requirements to help ensure accurate price submissions.

Rule 212(f) would permit ICC to establish alternative or additional standards of business integrity, financial capacity, creditworthiness, operational capability, experience, and competence for ACPs. Finally, Rule 212(g) would permit ICC to require a separate form of Participant Agreement for ACPs.<sup>7</sup>

Rule 212(e) would prohibit ACPs from submitting any Trades on behalf of Clients. ACPs would only be permitted to submit Trades for their own accounts or for Affiliates as House positions. Moreover, under Rule 212(h), no Affiliate of an existing Clearing Participant could be an ACP. As stated in the notice, ICC believes that Clearing Participants that engage in clearing on behalf of Clients should be Full Participants, with the operational and other resources to submit pricing at all relevant times for the full spectrum of products that they or their Clients may submit.<sup>8</sup>

### C. EOD Policy

The proposed rule change would make related changes to the EOD Policy to establish the price submission requirements for ACPs and to differentiate these requirements from the requirements for Full Participants.

First, the proposed rule change would create a new submission window for NA Instruments. ICC uses different submission windows to determine the prices of the different products it clears. For example, ICC has an existing submission window, known as the EU Submission Window, which occurs at the end of the London trading day for contracts that are

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<sup>7</sup> ICC anticipates requiring ACPs to submit trades by the close of the London trading day but at this time does not anticipate establishing any other additional or alternative standards. Notice, 87 Fed. Reg. at 43352.

<sup>8</sup> Notice, 87 Fed. Reg. at 43352.

primarily traded in London hours. The proposed rule change would create a new submission window for NA Instruments, which would occur at the end of the London trading day (referred to as the “NA Instrument EU Submission Window”). Because the NA Instrument EU Submission Window would occur at the end of the London trading day, like the current EU Submission Window, the timings for all elements of the price discovery process related to the NA Instrument EU Submission Window would be the same as those for the EU Submission Window.

The proposed rule change also would amend the EOD Policy to provide that if a Clearing Participant – both ACP and Full Participant – fails to make a required end-of-day submission during the applicable window, ICC may use the last intraday quote received prior to the close of that window (if one has been received on that day) to serve as that Clearing Participant’s end-of-day submission.

Moreover, the proposed rule change would add a requirement to the EOD Policy that ACPs provide price submissions for the NA Instrument EU Submission Window. The proposed rule change would further add language stating that Full Participants may, but are not required to, provide price submissions for the NA Instrument EU Submission Window.

Similarly, the proposed change would revise the provisions of the EOD Policy relating to firm trades. For the NA Instrument EU Submission Window, ICC would only designate firm trades between ACPs (and, for the avoidance of doubt, voluntary submissions by Full Participants in that window will not be subject to firm trades). Further, firm trades between

ACPs originating from the NA Instrument EU Submission Window would not be eligible for reversing transactions.<sup>9</sup>

The proposed rule change also would revise the EOD Policy to provide that prices established in the NA Instrument EU Submission Window would not be published externally by ICC. ICC would use prices only for risk management purposes.<sup>10</sup>

Finally, in the appendix to the EOD Policy, the proposed rule change would update the timetables for the end-of-day submission process to include the NA Instrument EU Submission Window (with timing and deadlines consistent with the EU submission window, as noted above).

### 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.<sup>11</sup> For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>12</sup> and Rules 17Ad-22(e)(6)(iv) and 17Ad-22(e)(18) thereunder.<sup>13</sup>

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<sup>9</sup> Under the EOD Policy, a reversing transaction is a second firm trade with identical attributes to the initial firm trade, but with the buyer and seller counterparties reversed, and at that day's EOD price rather than the original firm trade price.

<sup>10</sup> Notice, 87 Fed. Reg. at 43352.

<sup>11</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>13</sup> 17 CFR 240.17Ad-22(e)(6)(iv) and (e)(18).

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.<sup>14</sup> Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed rule change is consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions at ICC because it would expand the group of entities able to become members of ICC.

As discussed above, the proposed rule change would establish the requirements applicable to ACPs. These requirements would largely mirror those currently applicable to Full Participants, except that ACPs would submit prices for NA Instruments during the NA Instrument EU Submission Window. The Commission believes this would allow participation by entities that may be unable to provide prices for NA Instruments at the close of the New York trading day (as is required for Full Participants). In doing so, the Commission believes the proposed rule change would facilitate expanded participation at ICC and therefore the additional clearance and settlement of transactions at ICC by these additional participants. The Commission believes this change therefore would promote the prompt and accurate clearance and settlement of transactions at ICC, consistent with Section 17A(b)(3)(F) of the Act.<sup>15</sup>

B. Consistency with Rule 17Ad-22(e)(6)(iv)

Rule 17Ad-22(e)(6)(iv) requires that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its

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<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

participants by establishing a risk-based margin system that, among other things, uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.<sup>16</sup> As discussed above, proposed Rule 212 and the revised EOD Policy would require ACPs to submit prices for NA Instruments during the NA Instrument EU Submission Window. The Commission believes this requirement would facilitate the submission of prices for NA Instruments by ACPs, who may not have the operational capability to provide prices for NA Instruments at the close of the New York trading day (as is required for Full Participants). The Commission therefore believes that ACPs could serve as a reliable source of timely price data for NA Instruments, in addition to the price data that Full Participants submit. The Commission therefore finds the proposed rule change is consistent with Rule 17Ad-22(e)(6)(iv).<sup>17</sup>

C. Consistency with Rule 17Ad-22(e)(18)

Rule 17Ad-22(e)(18) requires that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to, among other things, establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities.<sup>18</sup> As discussed above, proposed Rule 212 and the revised EOD Policy would require ACPs to submit prices for NA Instruments during the NA Instrument EU Submission Window. The Commission believes this represents an objective requirement that would allow participation by persons that

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<sup>16</sup> 17 CFR 240.17Ad-22(e)(6)(iv).

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

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



may be unable to provide prices for NA Instruments at the close of the New York trading day (as is required for Full Participants). Moreover, as discussed above, any person who meets this requirement, and the other requirements for ACPs (which are largely the same as those applicable to Full Participants) could become an ACP. The Commission therefore believes the requirements applicable ACPs represent objective criteria which any person could potentially satisfy, thereby permitting fair and open access to ACP membership at ICC. The Commission therefore find the proposed rule change is consistent with Rule 17Ad-22(e)(18).<sup>19</sup>

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<sup>19</sup> 17 CFR 240.17Ad-22(e)(18).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act<sup>20</sup> and Rules 17Ad-22(e)(6)(iv) and 17Ad-22(e)(18) thereunder.<sup>21</sup>

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act<sup>22</sup> that the proposed rule change (SR-ICC-2022-010), be, and hereby is, approved.<sup>23</sup>

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

J. Matthew DeLesDernier,  
Deputy Secretary.

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<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>21</sup> 17 CFR 240.17Ad-22(e)(6)(iv) and (e)(18).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 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).

<sup>24</sup> 17 CFR 200.30-3(a)(12).