

SECURITIES AND EXCHANGE COMMISSION
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Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures and ICC Risk Management Framework

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 28, 2019, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange 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 formalize the ICC Clearing Participant (“CP”) Default Management Procedures (“Default Management Procedures”). ICC also proposes related default management enhancements to the ICC Risk Management Framework. 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,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 to formalize the Default Management Procedures. ICC also proposes related default management enhancements to the Risk Management Framework. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

Default Management Procedures

The Default Management Procedures set forth ICC's default management process, including the actions taken by ICC to determine that a CP is in default as well as the actions taken by ICC in connection with such default to close-out the defaulter's portfolio (the "Close-Out"). Currently, ICC's default management rules and procedures, including the tools available to manage a default and return to a matched book, are in several ICC documents, including the ICC Rules, the Default Auction Procedures - Initial Default Auctions, and the Secondary Auction Procedures. The Default Management Procedures do not change ICC's existing default management rules and procedures. Instead, the Default Management Procedures provide additional detail with respect to ICC's existing default management rules and procedures, such as assigning responsibility

for default management actions and adding instructions on how to perform default management actions. ICC's default management process is comprised of the following sub-processes, each of which is detailed in a section in the document: monitoring CPs to identify those that are at risk of defaulting or are in default ("Default Risk CPs"); declaring a default; transferring a defaulter's client portfolios ("Porting Portfolios") to non-defaulting Futures Commission Merchants ("Potential Receiving FCMs"); consulting with the CDS Default Committee, which is comprised of representatives from no more than three CDS Committee-Eligible Participants³; performing Standard Default Management Actions and Secondary Default Management Actions to facilitate the Close-Out; and managing default resources.

The Default Management Procedures introduce ICC's default management process. The document contains a list of defined terms that are key for default management and an overview of ICC's default management process that consists of descriptions of the abovementioned sub-processes. Moreover, the Default Management Procedures describe how ICC and its CPs maintain operational readiness to execute the default management process. ICC maintains a CDS Default Committee whose members consist of experienced trading personnel at CDS Committee-Eligible Participants that serve on the CDS Default Committee on a six-month rotating basis and, upon the declaration of a CP default, are seconded to ICC to assist with default management. The Default Management Procedures set forth detailed procedures for performing tasks that are necessary to maintain operational readiness, including administering the CDS Default Committee rotation process, working with customers of CPs who want to directly

³ A CP that has been approved by the Board for participation in the CDS Default Committee.

participate in auctions (“Direct Participating Customers”), maintaining up-to-date contact information, and testing the default management process (“Default Test”). ICC annually conducts a Default Test, in coordination with its CPs, and reviews the results to identify any issues or lessons learned.

The Default Management Procedures describe the sub-process of monitoring CPs. As part of a counterparty monitoring program, ICC performs daily, weekly, and quarterly monitoring designed, in part, to identify Default Risk CPs. Upon identifying such CPs, the ICC President (the “President”) may take no action or may activate the team responsible for overseeing the default management process, which is composed of ICC management, the ICC Risk Oversight Officer, and the most senior member of the Treasury Department (“Head of Treasury”) (together, the “Close-Out Team”), to move forward with the process of declaring a default. The Default Management Procedures establish the general procedures for identifying Default Risk CPs and activating the Close-Out Team in addition to the procedures that are specific to certain types of defaults and circumstances, including where a CP fails to meet payment obligations to ICC; a CP has filed for bankruptcy or is likely to fail to meet obligations due to dissolution, insolvency, or bankruptcy related events; a CP has not complied, or is likely not to comply, with certain limitations, conditions, or restrictions imposed on it by ICC; and a CP or its guarantor has failed, or is likely to fail, to meet obligations of ICC membership.

ICC’s activities immediately after the identification of a potential default comprise the default declaration sub-process. The Default Management Procedures list the actions that the Close-Out Team performs after activation but before a default declaration. The Close-Out Team holds an initial meeting to discuss, among other

matters, the circumstances surrounding the Default Risk CP(s), ICC's strategy for the Close-Out, and ICC's plans for meeting upcoming payment obligations. When the ICC General Counsel ("General Counsel") is satisfied that all conditions for determining the Default Risk CP(s) to be in default are met and all required approvals are secured, the General Counsel confirms by email which Default Risk CP(s) are in default. ICC then communicates the default(s), including to ICC's CPs, regulators, Risk Committee chairman, and the public. The Default Management Procedures also set forth the procedures applicable to the Close-Out Team following a default declaration to prepare for the Close-Out.

The Default Management Procedures discuss the CDS Default Committee consultation sub-process. Certain matters are subject to consultation with the CDS Default Committee, including the unwinding of the defaulter's remaining portfolio and the structure and characteristics of an auction, and certain actions may be delegated to the CDS Default Committee, such as executing Initial Cover Transactions⁴ on ICC's behalf. The Default Management Procedures establish procedures for convening and adjourning a CDS Default Committee meeting in addition to the actions taken at the initial CDS Default Committee meeting, which include reviewing the defaulter's cleared portfolio, the Close-Out strategy, the plan for transferring the Porting Portfolios to Potential Receiving FCMS, and a schedule for re-convening the CDS Default Committee over the period required to complete the Close-Out (the "Close-Out Period").

⁴ As part of the Close-Out, ICC may enter into transactions with CPs with respect to the defaulter's open positions to facilitate an orderly unwind of the defaulter's open positions and to mitigate damages to ICC and other CPs.

To facilitate the Close-Out, ICC performs Standard Default Management Actions during the Close-Out Period. ICC allows customers of CPs who are not yet Direct Participating Customers to register as such during the Close-Out Period to take part in auctions run by ICC. The ICC Risk Department (“Risk Department”) and Close-Out Team work together, in consultation with the CDS Default Committee, to implement the Close-Out strategy through Standard Default Management Actions. Specifically, the Default Management Procedures incorporate instructions on executing Initial Cover Transactions by auction and bilaterally, conducting Initial Default Auctions (“Initial Auctions”),⁵ and executing bilateral direct liquidation transactions in the market to liquidate positions. The document further assigns responsibility for tracking the position changes that result from the movement of positions or the creation of new positions.

In addition to Standard Default Management Actions, ICC may take Secondary Default Management Actions to facilitate the Close-Out where default resources are significantly depleted or no default resources remain. ICC may call for assessment contributions, which CPs are obligated to meet by providing additional amounts to the Guaranty Fund (“GF”), in the event that the GF has been depleted or ICC anticipates the need for additional funds related to a default. The Default Management Procedures discuss the procedures for calling for assessment contributions and initiating a Cooling-

⁵ The Default Auction Procedures - Initial Default Auctions, which govern Initial Auctions are available at:
https://www.theice.com/publicdocs/ICC_Default_Auction_Procedures.pdf

Off Period.⁶ During the Cooling-Off Period, the Risk Department and Close-Out Team, in consultation with the CDS Default Committee, continue to try to liquidate the defaulter's remaining portfolio through Secondary Auctions,⁷ which are subject to additional governance requirements. If available default resources are exhausted and ICC has not returned to a matched book, the Close-Out Team uses reasonable efforts to consult with the Risk Committee and then seeks the Board's decision on whether to 1) enter a Loss Distribution Period,⁸ 2) execute a partial tear-up⁹, 3) or terminate clearing services. The Default Management Procedures detail the procedures for each of the abovementioned Secondary Default Management Actions, including notifying the public, CPs, and regulators; consulting with the Risk Committee; obtaining the requisite Board approvals; and executing the action.

The Default Management Procedures provide an overview of the post-default porting sub-process. The Risk Department, in consultation with the CDS Default Committee, determine which Porting Portfolios to try to transfer to Potential Receiving

⁶ During a Cooling-Off Period, the aggregate liability of CPs for events of the GF and assessment contributions would be capped at "3x" their GF contribution for all defaults during that period.

⁷ The Secondary Auction Procedures, which govern Secondary Auctions are available at:
https://www.theice.com/publicdocs/ICC_Secondary_Auction_Procedures.pdf.

⁸ A Loss Distribution Period commences from and includes the date specified by ICC in a notice following a reduced gains distribution ("RGD") determination. RGD allows ICC to reduce payment of variation gains that would otherwise be owed to CPs as ICC attempts a Secondary Auction or conducts a partial tear-up.

⁹ In a partial tear-up, ICC terminates positions of non-defaulting CPs that exactly offset those in the defaulting CP's remaining portfolio.

FCMs. To facilitate the transfers, ICC distributes the Porting Portfolios to Potential Receiving FCMs and asks them to indicate which portfolios they are willing to receive by a deadline (“Porting Response Deadline”). The Default Management Procedures also discuss specific procedures for post-default porting in the case of a bankruptcy-related default, which require ICC to communicate and coordinate with the defaulter’s trustee in bankruptcy. Following the Porting Response Deadline, ICC determines which Porting Portfolios to transfer to which Potential Receiving FCMs, communicates to each Potential Receiving FCM its assigned Porting Portfolios (if any), and executes the relevant transfers.

The Default Management Procedures set forth the default resource management sub-process. The document includes procedures for the identification and execution of collateral management activities that are necessary for ICC to meet upcoming payment obligations. The Close-Out Team meets daily during the Close-Out Period to review the available liquid resources and determine how to meet upcoming payment obligations. The Chief Operating Officer and Head of Treasury coordinate the execution of collateral management activities, including liquidating non-cash collateral in the defaulter’s house and/or client accounts or utilizing ICC’s committed FX or committed repo facilities. Further, the Default Management Procedures describe the maintenance of a Default Management Ledger, which serves as a record to facilitate decision making and implement ICC’s default waterfall; the discussion points during the Close-Out Team’s daily meeting during the Close-Out Period; and the application of any special payments during the Close-Out Period.

Risk Management Framework

ICC proposes related default management enhancements to the ICC Risk Management Framework. Specifically, ICC proposes to incorporate a reference to the Default Management Procedures in the ‘Governance and Organization’ section to specify that the Default Management Procedures contain details regarding default management roles and responsibilities of the Board, ICC management, and relevant committees. Additionally, ICC proposes changes to the ‘Waterfall Level 6: GF Replenishment’ subsection to more clearly describe CPs’ obligations with respect to replenishment and assessment contributions to the GF. The proposed edits provide additional detail regarding the aggregate liability of CPs for replenishment and assessment contributions. If the cap on the additional GF contributions is reached, ICC may apply additional Initial Margin (“IM”) requirements if necessary to maintain compliance with regulatory financial resources requirements. The proposed changes further discuss how the additional IM requirements are computed and communicated to CPs. ICC also proposes to clarify the maximum contribution of a retiring CP that has given notice of its intent to terminate its CP status. Given the proposed formalization of the Default Management Procedures, ICC proposes replacing a reference to Appendix 3 of the Risk Management Framework (“Appendix 3”), which currently contains default management procedures, with a reference to the Default Management Procedures in the ‘Default Treatment’ subsection and removing Appendix 3 from the Risk Management Framework.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act¹⁰ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; in general, to protect investors and the public interest; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F)¹¹, because ICC believes that the proposed rule change enhances ICC's ability to manage the risk of a default by describing the processes for declaring a default and facilitating the Close-Out and by providing additional details regarding the roles and obligations of various stakeholders, such as the Board, Risk Committee, Close-Out Team, CPs, and the CDS Default Committee. Namely, the Default Management Procedures provide more detail with respect to ICC's existing default management rules and procedures, including assigning responsibility for default management actions and adding instructions on how to perform default management actions. The proposed changes to the Risk Management Framework incorporate reference to the proposed Default Management Procedures and more clearly describe CPs' obligations and aggregate liability with respect to replenishment and assessment contributions to the GF. ICC believes that the formalization of the Default Management Procedures and the amendments to the Risk Management Framework augment ICC's procedures relating to default management and enhance ICC's ability to withstand defaults and continue providing clearing services, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives

¹¹ Id.

agreements, contracts, and transactions; the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and the protection of investors and the public interest. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.¹²

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad-22.¹³ Rule 17Ad-22(b)(3)¹⁴ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. The Default Management Procedures provide detailed instructions regarding the process for managing a default and returning to a matched book, including conducting Standard and Secondary Default Management Actions, identifying and executing collateral management activities to meet payment obligations, and tracking default management resources. The proposed changes to the Risk Management Framework provide additional clarity regarding CPs' obligations regarding replenishment and assessment contributions as well as the computation of additional IM requirements that allow ICC to maintain compliance with

¹² Id.

¹³ 17 CFR 240.17Ad-22.

¹⁴ 17 CFR 240.17Ad-22(b)(3).

regulatory financial resources requirements. ICC believes that such changes enhance ICC's ability to manage a default by providing additional detail, transparency and clarity with respect to ICC's default management rules and procedures, thereby ensuring that ICC continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad-22(b)(3).¹⁵

Rule 17Ad-22(d)(4)¹⁶ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; implement systems that are reliable, resilient and secure, and have adequate scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations. The Default Management Procedures describe how ICC and its CPs maintain operational readiness to execute the default management process. The document sets forth ICC's processes for carrying out an annual Default Test, reviewing the results of the annual Default Test, and maintaining up-to-date contact information for default contacts. Such testing and preparation allow ICC to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures and implement systems that are reliable, resilient and secure, and have adequate scalable capacity, consistent with the requirements of Rule 17Ad-22(d)(4).¹⁷

¹⁵ Id.

¹⁶ 17 CFR 240.17Ad-22(d)(4).

¹⁷ Id.

Rule 17Ad-22(d)(8)¹⁸ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act.¹⁹ The proposed changes to the Risk Management Framework strengthen the governance arrangements set forth in the document by incorporating reference to the Default Management Procedures to note the default management roles and responsibilities of the Board, ICC management, and relevant committees. Moreover, the Default Management Procedures clearly assign and document responsibility and accountability for default management actions and decisions. The governance procedures provide for consultation with the Risk Committee and the CDS Default Committee, approval from the Board, and notification to the public, CPs, and regulators. As such, these governance arrangements are clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of the Board, Risk Committee, CDS Default Committee, and Close-Out Team is clearly documented, consistent with the requirements of Rule 17Ad-22(d)(8).²⁰

Rule 17Ad-22(d)(11)²¹ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity

¹⁸ 17 CFR 240.17Ad-22(d)(8).

¹⁹ 15 U.S.C. 78q-1.

²⁰ 17 CFR 240.17Ad-22(d)(8).

²¹ 17 CFR 240.17Ad-22(d)(11).

pressures and to continue meeting its obligations in the event of a participant default. ICC's default management rules and procedures contained in the ICC Rules, the Default Auction Procedures - Initial Default Auctions, and the Secondary Auction Procedures are publically available on ICC's website. Additionally, the proposed Default Management Procedures clarify and augment ICC's existing rules and procedures relating to default management and enhance ICC's ability to withstand defaults and continue providing clearing services, including by assigning responsibility for default management actions and adding instructions on how to perform default management actions, to ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default, consistent with the requirements of Rule 17Ad-22(d)(11).²²

(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 formalize the ICC Default Management Procedures and to amend the ICC Risk Management Framework will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes 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, Security-Based Swap Submission, or Advance Notice 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.

²² Id.

III. Date of Effectiveness of the Proposed Rule Change

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. Please include File Number SR-ICC-2019-008 on the subject line.

Paper Comments:

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549.

All submissions should refer to File Number SR-ICC-2019-008. 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, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2019-008 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.²³

Eduardo A. Aleman
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).